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respond to emergencies at the plant due to congestion in the parking lot, as well as some more specific issues related to safety at the facility such as fire hydrants and control of secondary containment for chemicals.

THE ARBITRATOR: Fire hydrants had to be in the parking lot? They couldn't be by the building?

THE WITNESS: Well, I think the parking lot arrangement constricted their ability to put fire hydrants where they needed to be. So they had to redesign the parking lot to will a low them to put them closer to the building, as I recall.

Q. What else was involved in that project, Mr. Lease?

A. What else?

Q. Yes. What other work did Alcoa do?

A. I'm not sure of all the details. There were several I just listed. There may have been more.

Q. Did Alcoa have to plant trees to provide shade for the cars, is that what Alcoa did?

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Q. Alcoa's compliance manager; is that what you're saying?

A. Basically, yes.

Q. We will look at a couple of items on here, but let's look on page, turn to page 21 of document. Bates stamped FAIR 57178. Do you see that, sir? Are you with me, Mr. Lease?

A. Yes, I do.

Q. This is a document prepared by Mr. Snee and his group to analyze the results of compliance issues; right?

A. I am not sure what Bill developed this chart for, to tell you the truth.

Q. Go back to the cover email then and look at the first two sentences. It says "Attached" is a summary of the Phase I report findings for the Fairchild sites compliance put this together to aid in our review of the identified compliance issues and assist those participating in the RIP."

The RIP we talked about yesterday was not rest in peace, but the rapid integration process; right?

A. I see it.

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A. I believe that was actually a requirement in the local regulation.

Q. Let's look at another document, previously introduced as Claimant's 73. Claimant's 73. Exhibit 73, do you recognize Exhibit 73, you are an addressee on this email from Hodge, Mr. Lease?

A. I see it.

Q. This is, do you know what Exhibit 73 is?

A. Mr. Snee?

Q. Well, who Mr. Snee is, first let's do that?

A. What is your first question?

Q. I was asking you what Exhibit 73 is. Then we can talk about Mr. Snee.

A. It is an email from Bill Snee to myself and others in Alcoa.

Q. It includes his summary of Phase I findings; is that right?

A. Yes. That is the subject.

Q. Who is Mr. Snee?

A. Mr. Snee is manager of compliance in Alcoa.

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Q. Back to page 21 of the document it says there, the first item on page 21 -- your Honor, it is Bates page 57178.

THE ARBITRATOR: I have it.

Q. The first entry under issue says "Integrated EHS operating permit. Authorize required one car parking lot be available for each employee (Not a strict EHS issue)." Do you see that, sir?

A. I see that.

Q. That is Mr. Snee's comments; right?

A. No.

Q. Whose comments are they?

A. I believe they extracted this from the Phase I report.

Q. Next, "The site has identified this issue as one of their main compliance issues to address. In addition, the permit requires a second entrance, to provide additional access to the emergency services in the event of an accident or emergency situation."

Do you see that, Mr. Lease?

A. Yes, I do.

Q. So that is the description of the

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 2 issue. It says there, going back to our
 3 discussion just a minute ago about St. Cosme the
 4 site was aware of this issue; right?
 5 A. I don't think this description
 6 captures the scope of the issue.
 7 Q. It is not just emergency access for
 8 vehicles and the parking one per spot?
 9 A. No. When we discussed this with
 10 the site during the site visit, the gap analysis
 11 site visit, they provided further detail to the
 12 team. And they also provided the estimated cost
 13 that is in the table supplied to Mr. Hodge of
 14 350,000 Euros.
 15 Q. We will get back to that in a
 16 second. Sticking with Mr. Snee's chart. If you
 17 look all the way to the right the column that
 18 says EPC Costs. Do you know EPC stands for
 19 estimated probable cost; right?
 20 A. I believe that is what it stands
 21 for, as I recall from Phase I.
 22 Q. Just above in the heading on that
 23 chart. It is broken down.
 24 A. Okay.
 25 Q. Next to it says reasonable worst

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1 JOHN LEASE - CROSS
 2 case cost?
 3 A. Yes.
 4 Q. It is listed there as estimated EPC
 5 cost as \$42,000; do you see that?
 6 A. Yes.
 7 Q. Next one over says 60,000 for
 8 reasonable worst case cost?
 9 A. I see that.
 10 Q. Did you understand the site
 11 actually had a quote for \$42,000 to do that work
 12 at the time?
 13 A. As I said, this was a number that
 14 was developed by ERM based on their Phase I.
 15 Q. Let's move a couple columns to the
 16 left under risk management. Do you see that?
 17 A. Okay.
 18 Q. It says there the second entrance
 19 needs to be established. The site has obtained
 20 a quote of 42,000 for expanding the car park to
 21 allow one lot per employee present as opposed to
 22 one lot per employee at the company. Do you see
 23 this?
 24 A. Uh-huh.
 25 Q. So now, in your chart you sent to

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1 JOHN LEASE - CROSS
 2 Mr. Hodge, it is a much bigger number for this
 3 project; right?
 4 A. Right.
 5 Q. 350,000 Euros, in fact; right?
 6 A. Yes.
 7 Q. Given the weakness of the dollar,
 8 that is more than that in dollars, right, it is
 9 like over \$400,000 or whatever it is?
 10 THE ARBITRATOR: These claims in
 11 Euros or dollars?
 12 MR. ZUROFSKY: These in this chart
 13 I believe in Euros.
 14 THE ARBITRATOR: The whole case?
 15 MR. ZUROFSKY: The claims are
 16 dollars.
 17 Q. So 350,000 Euros; right, Mr. Lease?
 18 A. That is what I have in my chart.
 19 Q. Your testimony I believe a little
 20 while ago was well the facility knew about these
 21 things and therefore when we are talking about
 22 St. Cosme the facility should have known what we
 23 are talking about in these charts, is that true
 24 of this chart, too, the Toulouse chart?
 25 A. Sorry?

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1 JOHN LEASE - CROSS
 2 Q. When we were talking about St.
 3 Cosme you told me that Mr. Miller should know
 4 about the state of his facilities; right?
 5 A. Yes.
 6 Q. I want to make sure you still feel
 7 the same about this issue, too?
 8 A. Yes.
 9 Q. What happens here, we have
 10 estimate, the site had estimate for 42,000 to do
 11 the work at the parking lot; correct?
 12 A. I don't know if the site had an
 13 estimate for 42,000. That is what ERM reported.
 14 Q. ERM reported in its Phase I the
 15 site had a quote for \$42,000?
 16 A. I am not sure where they got their.
 17 Q. You just told me from the Phase I?
 18 A. I see they obtained a quote for
 19 42,000.
 20 Q. That is what the site had done
 21 prior to the sale; right?
 22 A. Back whenever this was written,
 23 July of or early summer 2002.
 24 Q. Now with this item parking lot
 25 expansion described in the Phase I as not a

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strict EHS issue, you send a chart that shows estimated cost of 350,000 Euros which is ten times that amount, roughly?

A. Depending on the exchange rate.

Q. 1.2 exchange rate it would be \$420,000, that is ten times, right?

A. Correct.

Q. Ten times the amount; right?

A. Yes.

Q. Mr. Miller writes back to you and asks you for more detail on the cost estimates for that project; right? We looked at that letter at tab 17?

A. Yes.

Q. He asked you for all the projects but that one included. Mr. Harvey writes back to Mr. Miller saying those estimates are being developed. Those assessments will be sent to you, Fairchild when they are done. Do you recall that?

A. I recall what Mr. Harvey wrote, yes.

Q. In light of that project why didn't you send the information regarding the Toulouse

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parking lot to Fairchild before sending them the bill, the information being assessments and cost estimates?

A. This is the same issue we spoke about at St. Cosme. This was an ongoing issue before acquisition we can debate about what number actually is the correct number, but I received the 350,000 Euro estimate directly from the plant manager. When I showed him the issues we went -- he provided the information in this table.

So if the plant manager has this information in his possession of this magnitude, this is an issue that the facility had planned to undertake and complete to comply with the permit.

Q. The facility had a quote for 42,000 we just looked at; right, Mr. Lease?

A. That was in May of 2002 when ERM came through. If the project was reviewed, if other issues related to site issues for things such as hazardous chemical storing, secondary containment, storm water management, which were compliance issues included in this project that

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could account for the increase in cost.

Q. Was there any reason at all not to provide Mr. Miller with that information you just described to me, about increase in cost?

A. As I mentioned before, this is information that we felt Fairchild had and was aware of.

Q. Did you say that in any letter to Mr. Miller?

A. No, I did not.

Q. Did Mr. Harvey say that in his letter to Mr. Miller?

A. No, he did not.

Q. Did you communicate in any way to Fairchild in response to Mr. Miller's letter, hey, you already got that stuff and you're aware of these issues?

A. Well, I'll points out it is a two-way street. At no point did anyone from Fairchild approach us and say this number looks out of line, could we send consultants, can we consult with your consultants or consult with the plant to determine what this cost is.

Q. Turn to tab 17 again, sir,

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Mr. Miller's letter, let's look at what he says paragraph 2. He says "In light of the foregoing Fairchild is unable to determine and in any event disputes number 2 says whether estimated costs in those tables are justified. Those estimated costs include the 350,000 Euro parking lot cost." Right, Mr. Lease?

A. Yes.

Q. He is saying we are questioning whether or not that is justified. He goes on to say, "So that we can discuss this with you further, please provide us with the documentation." Right?

A. That is what he is asking.

Q. In the two-way street he is driving toward you, he say saying give me documentation so we can discuss it; right?

A. Yes.

Q. Mr. Harvey part of that two-way street writes back and says it is coming; doesn't he?

A. As I mentioned to you, Mr. Harvey was not aware of all the information that was available or not available in this process, he

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was responding to Mr. Miller's contention none of these issues were subject of a notice of violation. They weren't planning to pay for it anyway. They didn't see any environmental condition in their view. That was the sentiment conveyed in these letters from Mr. Miller.

Q. But Mr. Harvey doesn't say that, does he? He says I am going to give you documentation.

A. Mr. Harvey, as I mentioned, was an attorney responding primarily to Mr. Miller's contention any issue to be indemnifiable required a notice of violation from an agency.

Q. You were cc'd on Mr. Harvey's letter; right?

A. Yes.

Q. You never write Mr. Miller to tell him I am revoking Mr. Harvey's promise; did you?

A. I didn't respond to every line item in every letter. There was a lot of correspondence and lot of information flowing. If I missed that point you can blame me for that. But, frankly, the fact is these issues on site were known to Fairchild. They were

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noncompliance issues that needed to be resolved. It was clear we had a process in place to identify them as noncompliance and verify them we were going to go forward to fix this issue because it was a liability to our company as long as it remained unresolved.

Q. Let's talk about the issue regarding the parking lot. You say it is a noncompliance issue. It says here in Mr. Snee's chart adopted from ERM's Phase I hired by you, it is not a strict EHS issue. How is providing parking spaces an environmental issue, Mr. Lease?

A. It says right in front it is part of the integrated EHS operating permit, which is EHS.

Q. Operating permit in France; right? Is that what you're referring to?

A. Yes.

Q. Is your testimony any issue under that operating permit, no matter how unrelated to the environment qualifies as a Fasteners Environmental Condition if there is noncompliance with the permit?

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A. Not any condition in the operating permit. Those that related to EHS. When we did the analysis of this issue with our experts in France, in compliance and regulations and spoke with the individuals at the plant who were responsible for EHS, they came to the conclusion this project was an EHS project.

Q. Now Phase Is a you pointed out to me says it is not a strict EHS issue; right?

A. That is the, that is that assessor's opinion who did the Phase I.

Q. That is the Phase I you provided to Mr. Miller and to Fairchild?

A. That's correct.

Q. As far as Fairchild knew Alcoa's consultants said it was not a strict EHS issue; right?

A. There may have been parts of the parking lot that were not strictly EHS, but there were parts of the parking lot project that were.

Q. My question Fairchild, the communication Alcoa provided to Fairchild on this issue included the comment it is not a

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strict EHS issue; right?

A. I don't know if that was verbatim what was stated in the Phase I.

Q. You told me before it was when I pointed out the language?

A. I said these issues were distilled from the Phase I reports. I don't know if the parenthetical insertion of not a strict EHS issue is Mr. Snee's opinion or if it was in the report. I can't attest to that at this point.

Q. At no point following Mr. Miller's letter which not only asked for cost estimates but also asked for documentation supporting the claims did you say, hey, that is an EHS issue because of X, Y, Z you never responded; did you?

A. I felt the information provided in my table was sufficient documentation and supported the claim.

Q. Let's talk about machine guarding at Toulouse, our favorite topic. What does it say in your chart, this is now tab 16 your page a lot of zeros 12, do you see the entry about machine guarding there, sir, second up from the bottom?

16 (Pages 1091 to 1094)

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1 JOHN LEASE - CROSS
 2 A. I see the machine guarding
 3 category.
 4 Q. Yes. Do you see it? Do you see
 5 it, sir?
 6 A. Machine guarding?
 7 Q. Yes.
 8 A. Yes.
 9 Q. How much did Alcoa spend on machine
 10 guarding in Toulouse to date?
 11 A. To date --
 12 Q. You can go to tab 38 if you like.
 13 A. \$444,000.
 14 Q. Before spending that kind of money
 15 Alcoa performed a survey or assessment like we
 16 looked at yesterday for Fullerton; right?
 17 A. Yes, we did.
 18 Q. You never sent that to Fairchild;
 19 right?
 20 A. What's that.
 21 Q. Survey about machine guarding at
 22 Toulouse.
 23 A. Well, I don't know if we did a
 24 survey at Toulouse, frankly.
 25 Q. I thought you just said you did?

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1 JOHN LEASE - CROSS
 2 A. Sorry, I thought you were talking
 3 about Fullerton.
 4 Q. No. I was saying like the one we
 5 saw at Fullerton.
 6 A. I don't know what specifically was
 7 done as far as surveys, if anything at Toulouse.
 8 THE ARBITRATOR: Do you bid these
 9 things out when you have a project? How do they
 10 go about deciding which machines to fix, what
 11 kind of fix to put on them, how much it is going
 12 to cost? How do they go about that?
 13 THE WITNESS: Well, typically we
 14 would hire a consultant to do the survey, which
 15 would define, you know, the scope of the
 16 compliance requirements to achieve compliance.
 17 They would, in essence, prepare a one sheet
 18 solution which is kind of like a cookbook. Say
 19 here are the deficient areas, here is what you
 20 need to do to fix them, put this guard on this
 21 piece of the equipment to keep people from
 22 putting their hands in.
 23 THE ARBITRATOR: They give you
 24 estimates, costs?
 25 THE WITNESS: Yes. They would

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1 JOHN LEASE - CROSS
 2 estimate the cost for each machine.
 3 THE ARBITRATOR: So they wouldn't
 4 be the one to do the work, they would have to
 5 hire someone else?
 6 THE WITNESS: I think it could be
 7 done in some cases the consultant could
 8 actually, was qualified to install the guards.
 9 In other cases --
 10 THE ARBITRATOR: Did they bid
 11 these projects, how did they go about that?
 12 THE WITNESS: For the actual --
 13 THE ARBITRATOR: For the work in a
 14 place like this you're talking about, Toulouse.
 15 Do you know what they did at Toulouse?
 16 THE WITNESS: I think at
 17 Toulouse, I'm not certain, but for local
 18 projects they could go to local vendors and bid
 19 them out. It was dependent really on the
 20 capabilities that existed in that particular
 21 area for this type of work.
 22 THE ARBITRATOR: Thank you.
 23 Q. Did Alcoa employ a competitive bid
 24 process with respect to say machine guarding?
 25 A. For all of them, I don't know.

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1 JOHN LEASE - CROSS
 2 Typically the Alcoa process for conducting
 3 outside work does include competitive bidding.
 4 We also have a process whereby we select certain
 5 consultants based on their capabilities and we
 6 negotiate low rates, lower rates than they would
 7 offer commercially due to the leverage that
 8 Alcoa has in terms of its use of these
 9 consultants. So those are called Master Service
 10 Agreements.
 11 Q. But you don't know in this
 12 situation if there was competitive bid process?
 13 A. For this particular project, I
 14 don't know how they bid the work out.
 15 Q. Back just to finish the discussion
 16 of machine guarding at Toulouse, Mr. Snee's
 17 chart on page 20 of this chart, 57177.
 18 A. Page 20?
 19 Q. Yes.
 20 THE ARBITRATOR: What exhibit?
 21 MR. ZUROFSKY: Mr. Snee's chart, I
 22 guess 430 we introduced.
 23 (Arbitration Exhibit 430
 24 was marked.)
 25 THE ARBITRATOR: Mr. Snee's chart

17 (Pages 1095 to 1098)

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1 JOHN LEASE - CROSS
 2 is 73, isn't it?
 3 MR. ZUROFSKY: 73, previously
 4 marked. Right. Sorry.
 5 Q. Do you see page 20, sir?
 6 A. I'm on 20.
 7 Q. The middle line in the chart, does
 8 that relate to the machine guarding project at
 9 Toulouse that we just discussed that ended up
 10 being \$444,000?
 11 A. Yes.
 12 THE ARBITRATOR: You are on
 13 page 20?
 14 MR. ZUROFSKY: Yes. In the middle
 15 row.
 16 Q. That's discussing the machine
 17 guarding project. This is based upon Mr. Snee's
 18 review of the Phase I reports; right?
 19 A. That's my understanding of what he
 20 did.
 21 Q. Which are the reports provided to
 22 Fairchild; right?
 23 A. Yes.
 24 Q. He comes up with an estimate, if
 25 you look over on the right for EPC, estimated

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1 JOHN LEASE - CROSS
 2 probable cause and reasonable worst case, of
 3 between 27 and 40,000?
 4 A. Mr. Snee comes up with the
 5 estimate?
 6 Q. Yes.
 7 A. I don't think that is Mr. Snee's
 8 estimate.
 9 Q. Whose estimate is it?
 10 A. I think it is probably from ERM.
 11 Q. But it is an estimate Mr. Snee has
 12 in his chart?
 13 A. It is not his estimate, it is here.
 14 He didn't go through each one of these and
 15 estimate them individually I think he was just
 16 compiling data from existing report.
 17 Q. From the Phase Is. So from the
 18 Phase I process the number is between 27 and
 19 40,000 estimated, the worst case scenario is
 20 40,000 for machine guarding at the Toulouse
 21 facility; correct?
 22 A. That is what the reports say.
 23 Q. You spent \$444,000; right?
 24 A. Yes.
 25 Q. The estimate in the chart you send

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1 JOHN LEASE - CROSS
 2 to Mr. Hodge was in Euros, we don't have to do
 3 the conversion was roughly 180,000 Euros; right?
 4 A. That's correct.
 5 Q. A little over 200,000, somewhere
 6 over \$200,000; right?
 7 A. Approximately.
 8 Q. It is 444,000 today at Toulouse;
 9 right for machine guarding?
 10 A. Correct.
 11 Q. You're not done yet; right?
 12 A. I don't know if they are done or
 13 not.
 14 Q. Are you done at any of the
 15 facilities, do you know with machine guarding
 16 work?
 17 A. There are some we may be finished
 18 with.
 19 Q. How far out, how many years? How
 20 many years are you planning to work on the
 21 machine guarding?
 22 A. To complete all of the machines?
 23 Q. Yes.
 24 A. I think the plants would forecast
 25 out two to three years in advance maybe 2007,

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1 JOHN LEASE - CROSS
 2 this is 2007. Maybe 2008.
 3 Q. So period of six years or so, five
 4 to six years following acquisition; right?
 5 A. I am not sure they create forecasts
 6 right at the time of the acquisition. I don't
 7 know what the business unit was doing in terms
 8 of their forecasting, when they started or what
 9 their projections were.
 10 Q. We looked at back on tab 41.
 11 THE ARBITRATOR: These machine
 12 guardings are required by local authority,
 13 are they, or pursuant to some local regulation?
 14 THE WITNESS: Yes.
 15 THE ARBITRATOR: They allow you
 16 six years to do this work? If it is a hazard to
 17 an employee's health isn't there any time limit
 18 you can spend doing it?
 19 THE WITNESS: It is a good question.
 20 These guards are required either by local or
 21 national level legislation, I guess the
 22 practicality is that all machines in cases like
 23 this where numerous machines are noncompliant it
 24 is very difficult to go in and do them all at
 25 one time. It takes the machine down, has to be

18 (Pages 1099 to 1102)

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1 JOHN LEASE - CROSS
2 reconfigured to allow the guarding to be put in
3 place.

4 So what Alcoa typically does is
5 identifies the highest risk machines. If you
6 recall yesterday we had that risk matrix.

7 THE ARBITRATOR: Yes.

8 THE WITNESS: They then go
9 through highest risk machines first and work
10 their way through until the end.

11 In the interim you can implement
12 what are called administrative controls which
13 limit the workers' ability to actually access
14 the machine at a critical point. Those are not
15 preferred because employee can actually
16 disregard them. So the preferred solution is to
17 put an engineered guard in that is effective and
18 meets the requirements.

19 Q. We have gone through the first
20 three letters on the chart on tab 41; right?

21 A. Okay.

22 Q. Skip Torrance for a minute because
23 I understand we may have a document issue, I
24 will go to City of Industry under safety
25 compliance. Do you see that?

1 JOHN LEASE - CROSS

2 A. Yes.

3 Q. Must have missed it in the
4 proofreading; right? Let's look at the letter.
5 This is the letter listed as providing notice
6 for City of Industry; right?

7 A. Yes.

8 Q. What kind of notice is this of our
9 three buckets of notice, what type of notice is
10 this, sir?

11 A. This is primarily a -- well it is
12 notice of costs incurred primarily. As I
13 mentioned yesterday, we felt that the Phase I
14 reports and the four letters related to the
15 major facilities in former Fairchild plants
16 represented notice of environmental conditions
17 at all locations.

18 Q. So the City of Industry was not one
19 of those four facilities that had the four
20 letters we talked about yesterday?

21 A. No. There was not a gap analysis
22 for that facility.

23 Q. So this is a letter basically
24 saying work has already started, here are the
25 bills. It is a notice of liability letter;

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1 JOHN LEASE - CROSS

2 A. Back on.

3 Q. Tab 41, the chart City of Industry;
4 right?

5 A. We are under equipment safety.

6 Q. It is listed there John Lease to
7 Mike Hodge 2004. That document is tab 20 in
8 your binder from Mr. Chesler. Do you remember
9 yesterday there was some discussion about
10 Mr. Miller's letter referring to Torrance
11 facility when the "Re:" line was the Torrance
12 facility?

13 A. Say that again.

14 Q. There was some discussion about
15 Mr. Miller's letter had reference to the
16 Torrance facility but the "Re:" line was the
17 Fullerton facility, do you remember that?

18 A. Yes.

19 Q. Typographical letters and
20 oversights happen in letters; right, Mr. Lease
21 from time to time?

22 A. That is a question.

23 Q. Look at your letter from City of
24 Industry, you dated it 2003. But I think you
25 told us actually it was 2004; right?

1 JOHN LEASE - CROSS

2 right?

3 A. Yes.

4 Q. There are other things in it. That
5 is its primary purpose?

6 A. It describes the work that is being
7 done and costs incurred up to this point.

8 Q. It is not a, hey, here is what we
9 are going to do before we start work, right,
10 letter?

11 A. I think in the descriptions we are
12 describing specifically what the costs related
13 to. But the description also conveys what
14 activities are going on and would go on in the
15 future. Clearly these were not finished in all
16 cases.

17 Q. Work had started though; right?

18 A. Work had started, correct.

19 Q. Let's turn forward to page, it
20 should be marked fair 500198. You have
21 different numbers, sorry, I will give you your
22 version of this one second. I am working off of
23 a different version. Your version of the FC
24 263 -- 253, excuse me.

25 A. Sorry, I'm lost.

19 (Pages 1103 to 1106)

1 JOHN LEASE - CROSS
 2 Q. Your version, tab 20 of the binder,
 3 Bates page will be FC 253.
 4 A. Okay.
 5 Q. And then 254 actually is the page I
 6 want to look at. 256 is an invoice from
 7 Premiere Safety; right?
 8 A. Yes it is.
 9 Q. It is an invoice you are sending to
 10 Fairchild for work done by premiere safety;
 11 right?
 12 A. Yes.
 13 Q. Premiere safety was a contractor
 14 used by Alcoa in this case at the Unruh and City
 15 of Industry facility?
 16 A. City of Industry, I am not sure
 17 which one of the two plants it is.
 18 Q. If you look at the -- it looks like
 19 it covers both. Look at entries on the invoice,
 20 first two relates to Unruh. Third says Unruh,
 21 transfer of stuff from Unruh and Temple?
 22 A. Right.
 23 Q. I want to draw your attention to
 24 the paragraph that begins "These draft procedure
 25 for lock, tag and verify and confined space

1 JOHN LEASE - CROSS
 2 guarding, lock tag verify. So components of the
 3 Alcoa standard would include much of what is
 4 required in OSHA.
 5 Q. Mr. Lease, I believe I asked you at
 6 your deposition if you had compared Alcoa
 7 standards with OSHA or CAL OSHA standards; have
 8 you ever done that?
 9 A. Line by line.
 10 Q. Let's look at page 232.
 11 A. Okay.
 12 Q. Here we're talking about Alcoa
 13 standard 33.013. Do you know what that is? It
 14 is referenced in 231, that's why. Do you know
 15 which one that is?
 16 A. In my letter, 231?
 17 Q. On your deposition, 231 to 232. I
 18 apologize. Do you still have your transcript
 19 there from yesterday?
 20 A. Page 231 in the deposition?
 21 Q. Yes. I realize here we are
 22 talking about a specific Alcoa standard. But I
 23 want to ask you the question about more
 24 generally.
 25 A. Okay. I'm there.

1 JOHN LEASE - CROSS
 2 entry." Do you see that there?
 3 A. Yes, I do.
 4 Q. "They ship for SPA at COI." Do you
 5 know what SPAs are?
 6 A. Yes.
 7 Q. What are they? What is SPA?
 8 A. In this context it would be, I
 9 think the single point accountable person which
 10 is the individual that would have responsibility
 11 for this particular EHS area.
 12 Q. Then COI? City of Industry; right?
 13 A. City of Industry.
 14 Q. It says "to review to ensure all
 15 OSHA and Alcoa compliance directives are met."
 16 Do you see that?
 17 A. I see that.
 18 Q. This is an invoice for work done in
 19 part at least to ensure compliance with Alcoa --
 20 Alcoa compliance requirements; right?
 21 A. No. We talked earlier regarding
 22 Alcoa standards such as lock tag verify and
 23 machine guarding and so forth, there is overlap,
 24 significant overlap in countries with complete
 25 regulatory citations for things such as machine

1 JOHN LEASE - CROSS
 2 Q. 231 into 232, we are talking about
 3 difference between OSHA standards and Alcoa
 4 standards. On 232 I asked you "Do you have any
 5 knowledge, sir, in this particular instance" I
 6 was talking about standard 33.1013 the
 7 recommendation being made here is being made to
 8 comply with OSHA or CAL OSHA standard? Do you
 9 see that?
 10 A. Yes.
 11 Q. You said "As I said earlier I am
 12 not a safety expert. You would need to talk to
 13 the individuals involved here to see if there
 14 was, you know, what the difference was between
 15 these."
 16 Do you see that?
 17 With respect to -- are you a safety
 18 expert when it comes to lock tag verify issues?
 19 A. No.
 20 Q. Do you feel competent to testify as
 21 an expert between the Alcoa standards and OSHA
 22 standards on that issue?
 23 A. I think I was just making a general
 24 statement.
 25 Q. It does list here on the invoice,

Page 1111

JOHN LEASE - CROSS

back now in tab 20, work was done to comply not just with OSHA but OSHA and Alcoa compliance; right?

A. That's what is listed on the invoice.

Q. Two different things; right?

A. With overlap.

Q. They say, they are listed as two different things; right?

A. They are listed as two different things.

Q. You sent this invoice to Fairchild for reimbursement under the agreement; right?

A. Yes.

Q. You agree that work done to comply with Alcoa standards is not reimbursable under the agreement; correct?

A. That is in excess of the regulatory requirements.

Q. Now back to our chart on tab 41. We have looked at now the correspondence under equipment safety for City of Industry. That was the document we just looked at.

MR. CHESLER: Sorry, what the tab

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JOHN LEASE - CROSS

are we at?

MR. ZUROFSKY: 41. Second page.

Q. Right. We have been working our way down this chart, Mr. Lease; right?

A. Yes.

Q. So the one under City of Industry, under equipment safety was dated March 9, 2004 letter from you to Mr. Hodge. We just looked at that document; right?

A. Yes, we did.

Q. That document as you described it was a notice of liability, what fell into the notice of liability category, right you said here is work that is started, here is the cost, here is the invoices?

A. It was somewhat of also detailed notice that further explained the general categories we had provided before.

Q. The work had started; right?

A. Yes, it had.

Q. So, let's move down to Fullerton now. This is -- I think we only have one more after this to do because they all repeat after that. Or two more.

Page 1113

JOHN LEASE - CROSS

So, the next one is Fullerton. We looked a little bit at this yesterday, right, sir?

A. Yes, we did.

Q. That is the letter we talked about yesterday that had the machine guarding estimate. Then we looked at the machine guarding survey. Do you recall that?

A. Yes.

Q. I won't belabor the point on this document, this is again one of those documents that Mr. Miller responded then was covered by Mr. Harvey's letter and returned; right?

A. Well, you keep referring to Mr. Harvey's letter as though it was --

THE ARBITRATOR: It is not your favorite letter; right?

THE WITNESS: It certainly isn't.

But I think it points out the fact that certainly there were some disconnects in the communication internally at times. I think that happens. Mr. Harvey's response is what it is. I wouldn't categorize it as Alcoa's formal policy in this particular case.

Page 1114

JOHN LEASE - CROSS

Q. Again, you were cc'd on that letter and never sent Mr. Miller a correction on his letter; right?

A. That's correct.

Q. So, but Fullerton is one of the facilities that is referred to in Mr. Harvey's letter; right?

A. It was one of the facilities that was in sandy's response, correct.

Q. We looked at the machine guarding number before. I just want to do one or two other of these and we can just move off of this. We looked at machine guarding. If you look on the, I guess second page of your chart; so the Bates stamp, if we have the same version, which we may or may not, tab 14, we have the sale version, 41.

THE ARBITRATOR: Tab 14?

MR. ZUROFSKY: Yes, your Honor.

Q. We looked at machine guarding that had an estimate of \$58,000 yesterday. It turned out to be over a million dollars as of today, right, Mr. Lease?

A. What was your figure?

21 (Pages 1111 to 1114)

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Page 1115

1 JOHN LEASE - CROSS
 2 Q. 58,000 as of this letter.
 3 Yesterday you told me it was 1,032,289 as of end
 4 of last year?
 5 A. From the liability table?
 6 Q. Yes.
 7 A. Yes.
 8 Q. They are still doing machine
 9 guarding work at Fullerton; right?
 10 A. I believe they are.
 11 Q. Next item down is fall control
 12 listed there as 45,000. How much has been spent
 13 to date on fall control at Fullerton?
 14 A. Fall protection compliance,
 15 \$151,000.
 16 Q. So 151,000. The number in the
 17 chart is 45. The number in the chart you sent
 18 to Fairchild is 45; right?
 19 A. That's correct.
 20 THE ARBITRATOR: Where, that is
 21 the next one here underneath the machine
 22 guarding; right?
 23 MR. ZUROFSKY: Right, your Honor.
 24 Listed as 45,773. Mr. Lease told us it is over
 25 150,000.

Page 1116

1 JOHN LEASE - CROSS
 2 Q. The next one down is fire
 3 prevention.
 4 A. Yes.
 5 Q. It is estimated there at \$28,000;
 6 right?
 7 A. That's correct.
 8 Q. Can you tell me how much has been
 9 spent to date on fire prevention at the
 10 Fullerton facility?
 11 A. 2,800.
 12 Q. \$2,800, are you sure? Let's look
 13 at tab 38. Where are you looking?
 14 A. Fire safety.
 15 Q. It says here "The work is not
 16 limited to permit program, storage, handling of
 17 flammable and combustible liquids controlling
 18 use storage and handling of flammable gases and
 19 dispensing of flammable and combustible
 20 liquids."
 21 Let's look at Fullerton, the work
 22 that has been done on that doesn't that include
 23 combustion safety, sir?
 24 A. I don't know if that is a straight
 25 match or not.

Page 1117

1 JOHN LEASE - CROSS
 2 Q. It says here in your description,
 3 maybe it is just not clear enough from your
 4 chart for anyone to figure it out. It says
 5 handling of combustible liquids; right?
 6 A. Yes.
 7 Q. The word, in chart 38 for
 8 combustion safety says the word combustion
 9 safety line 50 lists \$154,000; doesn't it?
 10 A. Well, that is what has been listed
 11 for combustion safety but I am not sure that
 12 corresponds to this particular entry in the
 13 table.
 14 Q. So if the entry is not on the table
 15 you didn't tell Fairchild about it beforehand;
 16 right?
 17 A. I can't say either way. I don't
 18 have the information related to the specific
 19 project to detail what is covered in it.
 20 Q. You just can't tell based upon the
 21 description in your letter to Mr. Hodge; right?
 22 A. I can't tell what the individual
 23 project titles refer to. That's the detail I'm
 24 lacking.
 25 Q. Sorry?

Page 1118

1 JOHN LEASE - CROSS
 2 A. That's the detail I am lacking
 3 right now.
 4 Q. In tab 38, that is what you are
 5 referring to?
 6 A. Yes. My summary table.
 7 Q. That is the same form of table we
 8 will look at it a little later in which you
 9 provided what you called notice to Fairchild
 10 with those asterisk system; right?
 11 A. This table?
 12 Q. Not this exact version, earlier
 13 version?
 14 A. Yes.
 15 Q. That is kind of thin descriptions
 16 you said you can't figure out what the project
 17 was with the same descriptions contained in the
 18 earlier table sent to Fairchild; right?
 19 A. Sorry.
 20 Q. You just told me you couldn't tell
 21 from entry on tab 38 what combustion safety
 22 related to; right?
 23 A. That's correct. I don't have
 24 detailed understanding of what that is for.
 25 Q. That is the only description, if

22 (Pages 1115 to 1118)

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Page 1119

1 JOHN LEASE - CROSS
 2 you go back, that you provided in those asterisk
 3 tables as well; right?
 4 A. Combustion safety, the project
 5 titles didn't change.
 6 Q. Right. I am saying that is what you
 7 told Fairchild was 154,000, combustion safety;
 8 right?
 9 A. In this table, yes.
 10 Q. You can't figure out if that is the
 11 same project as listed in your letter from June
 12 of 2003?
 13 A. I can't figure out what all is
 14 included in that number.
 15 Q. Let's move on to the next -- that's
 16 Fullerton. Let's move to the next item in our
 17 chart from tab 41, this is the letter under St.
 18 Cosme, under St. Cosme we have first two are
 19 ones we looked at already; right?
 20 A. The first two letters?
 21 Q. Yes. Those are the ones we looked
 22 at at the top of the chart.
 23 A. Okay.
 24 Q. Are you with me?
 25 A. Yes. I'm with you.

Page 1120

1 JOHN LEASE - CROSS
 2 Q. The third letter, letter from John
 3 Lease to E. Beckford on December 13, 2004 is one
 4 we have not looked at yet; right?
 5 A. I believe that is true.
 6 Q. Let's take a look at it I am not
 7 sure it is in your binder. It may not be. In
 8 which case I will have to give it to you. It
 9 may be in my binder.
 10 Counsel, do you know if that letter
 11 referenced there is in Mr. Lease's binder?
 12 MR. CHESLER: It is not.
 13 Q. Let's go to the binder we handed
 14 you. It is going to be easiest to work from the
 15 back. Do you see that there?
 16 A. What am I looking at?
 17 Q. The binder I handed you, the
 18 correspondence binder. There is tabs by sort of
 19 the name of the facilities. The last tab is
 20 multiple sites, miscellaneous.
 21 A. Okay.
 22 Q. Right?
 23 A. Okay.
 24 Q. If you look under that, these are
 25 chronologically in order sort of moving forward

Page 1121

1 JOHN LEASE - CROSS
 2 on this subject, the miscellaneous sites. Okay?
 3 A. Okay.
 4 Q. Letters are separated by yellow
 5 sheets.
 6 A. Okay.
 7 Q. So, move your way forward
 8 chronologically until we get to December 13,
 9 2004, it should be, I think it is the sixth
 10 letter. In any event, chronologically forward
 11 to December 13, 2000?
 12 A. I don't have yellow sheets in my
 13 book.
 14 Q. I apologize then.
 15 A. December 13.
 16 Q. 2004.
 17 A. Okay.
 18 Q. Do you see it there?
 19 A. I'm there.
 20 MR. ZUROFSKY: Your Honor?
 21 THE ARBITRATOR: Yes.
 22 Q. Is this the letter that is referred
 23 to in the chart on tab 41 from you to
 24 Mr. Beckford on December 13, 2004?
 25 A. Yes.

Page 1122

1 JOHN LEASE - CROSS
 2 Q. This relates to lock tag and verify
 3 noncompliance issues at the "Re:" line?
 4 A. Yes.
 5 Q. Looking at this letter, this is
 6 similar letter to the one we just looked at
 7 regarding -- withdrawn.
 8 If you go to the second paragraph
 9 of this letter.
 10 A. Okay.
 11 Q. It says "These findings necessitate
 12 a more thorough review and survey of each
 13 facility's LTV programs be undertaken to
 14 determine full scope of noncompliance." Do you
 15 see that?
 16 A. Yes.
 17 Q. Does that tell you that Alcoa did
 18 undertake surveys at each of these facilities
 19 regarding lock tag verify?
 20 A. That refreshes my recollection.
 21 Q. You did, yes?
 22 A. Pardon?
 23 Q. Alcoa did?
 24 A. I believe that's the case, yes.
 25 Q. Alcoa never sent those surveys to

23 (Pages 1119 to 1122)

Page 1123

1 JOHN LEASE - CROSS
 2 Fairchild in advance of incurring costs with
 3 regard to the work; right?
 4 A. The LTV surveys?
 5 Q. Yes, at these facilities?
 6 A. I don't recall sending them. No.
 7 Q. It goes on to say "As well as the
 8 required corrective actions to bring the
 9 facility's programs into compliance surveys are
 10 completed and corrective actions are being
 11 implemented at the following facilities."
 12 Do you see that?
 13 A. Yes.
 14 Q. This is another instance in which
 15 you refer to surveys that were not provided to
 16 Fairchild, and two are sending Fairchild a bill
 17 for work already started; right?
 18 A. We are sending them a bill for work
 19 that's being done, correct.
 20 Q. That is the letter referred to in
 21 the chart between you and Mr. Beckford on tab
 22 41; right?
 23 A. Let me check that's correct.
 24 Q. The next document in my binder is
 25 the letter dated December 20, 2004. I think

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1 JOHN LEASE - CROSS
 2 that is the last chronological letter listed in
 3 the chart on tab 41.
 4 THE ARBITRATOR: What is that
 5 under?
 6 MR. ZUROFSKY: Go down, your
 7 Honor, to the Nemesvamos facility and Kelkheim
 8 facility there is a reference to a letter J.
 9 Lease to E. Beckford December 20, 2004. I
 10 believe and Mr. Lease can tell us, that is the
 11 letter that we're looking at, the next one we're
 12 looking at in my binder is that letter.
 13 THE ARBITRATOR: In this book
 14 here?
 15 MR. ZUROFSKY: Yes. After the one
 16 we just looked at for December 13. It is the
 17 next one.
 18 A. Which letter are we on?
 19 Q. December 20, 2004. The one after
 20 the December 13 letter related to lock tag
 21 verify. Do you see it?
 22 A. Yes.
 23 Q. I believe chronologically this is
 24 the last letter listed in the chart on tab 41
 25 that we discussed, remember we talked about

Page 1125

1 JOHN LEASE - CROSS
 2 nothing past December 31, 2004?
 3 A. Yes.
 4 Q. This is the last one in the chain
 5 chronologically. Again this looks familiar to
 6 the last letter if you look at the second
 7 paragraph. This one relates however to machine
 8 guarding; right, sir?
 9 A. Yes.
 10 Q. Second paragraph "These findings
 11 necessitated that a more thorough review and
 12 survey of each facility's machine guarding
 13 programs be undertaken to determine the scope of
 14 noncompliance issues as well as the needed
 15 corrective actions to bring the noncompliance
 16 equipment into compliance."
 17 It continues on "The detailed
 18 surveys were conducted, detailed surveys were
 19 conducted and corrective actions are being
 20 implemented at the following facilities to bring
 21 the machine guarding programs into compliance
 22 with existing governmental requirements." Do you
 23 see that?
 24 A. Yes.
 25 Q. That lists eight facilities, City

Page 1126

1 JOHN LEASE - CROSS
 2 of Industry, Fullerton, Kelkheim, Stoughton, St.
 3 Cosme, Torrance, Simi Valley and Nemesvamos. Do
 4 you see that?
 5 A. Yes.
 6 Q. Again, like the last letter, this
 7 is a situation where you have done surveys on
 8 these issues; right?
 9 A. You have identified issues in the
 10 initial review of the facilities in Phase Is and
 11 site assessments yes.
 12 Q. You say detailed surveys were
 13 conducted. Those detailed surveys referenced in
 14 the second paragraph are surveys that followed
 15 on the original site assessment; correct?
 16 A. After we, we indicated we were
 17 going to do surveys at the facilities, which is
 18 what we did.
 19 Q. You did those; right?
 20 A. We did them.
 21 Q. One of the ones we looked at
 22 yesterday Fullerton is listed here, that is the
 23 box we talked about yesterday?
 24 A. Yes.
 25 Q. There is similar surveys for all

24 (Pages 1123 to 1126)

Page 1127

1 JOHN LEASE - CROSS
 2 these facilities?
 3 A. Yes.
 4 Q. They were done by the time of this
 5 letter?
 6 A. That's what is stated here, yes.
 7 Q. At this letter the work had already
 8 started at those facilities; right?
 9 A. For corrective actions?
 10 Q. Yes.
 11 A. That's correct.
 12 Q. You were sending Fairchild the bill
 13 for some of that work; right?
 14 A. Yes. Because the assessment we
 15 performed indicated that all of the facilities
 16 had machine guarding compliance issues. The
 17 surveys confirmed that. And we were going about
 18 fixing the problem.
 19 Q. You spent \$729,000 at the time of
 20 this letter doing that work; right?
 21 A. I believe, yes.
 22 Q. This falls again into the category
 23 of notice of bills already incurred, notice of
 24 liability; right?
 25 A. What was your first comments.

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1 JOHN LEASE - CROSS
 2 Q. Notice of liability, bills already
 3 incurred.
 4 A. Well, we had I think in our notice
 5 of the environmental condition provided notice
 6 of the condition. This would have been the
 7 first correspondence related to the costs that
 8 were being incurred for the condition we found.
 9 Q. Sorry, what?
 10 A. For the machine guarding corrective
 11 actions.
 12 Q. That work had already started;
 13 right?
 14 A. Yes, it had.
 15 Q. We are done chronologically. I
 16 have to circle back to one. Then we will take
 17 the break. We have one more letter we skipped
 18 over, then we can obviously take a break.
 19 So this is previously introduced as
 20 Exhibit 69. The reason I had to pause there is
 21 a different version in my binder? This is the
 22 letter, sir, is it not referenced with respect
 23 to Torrance in the chart on tab 41. Okay?
 24 A. Yes.
 25 Q. So here again is one of these

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1 JOHN LEASE - CROSS
 2 letters that Mr. Miller responded to. And that
 3 was the subject of Mr. Harvey's letter; right?
 4 A. In the context of the contention
 5 that anything that was indemnifiable had to be
 6 in notice of violation from Mr. Miller.
 7 Q. I am not sure I understand the
 8 answer. My question was, this is a letter to
 9 which Mr. Miller responds and then is the
 10 subject of Mr. Harvey's response of August 1,
 11 2003; right?
 12 A. Yes. Mr. Harvey responded to
 13 Mr. Miller's letter.
 14 Q. This is one of the four gap
 15 analysis facilities you say provide notice for
 16 all of the 16 facilities; right?
 17 A. Correct.
 18 Q. On this facility, let's look at
 19 some of the numbers discussed here. On the
 20 chart, look at the second row, the facility is
 21 not complying. Do you see that?
 22 A. Yes.
 23 Q. Estimate there is 10,000; right?
 24 A. Yes.
 25 Q. How much -- go to tab 38 if you

Page 1130

1 JOHN LEASE - CROSS
 2 like.
 3 MR. ZUROFSKY: Your Honor, I am on
 4 page --
 5 THE ARBITRATOR: I have it.
 6 Q. How much has Alcoa spent on that
 7 project?
 8 THE ARBITRATOR: This is the air
 9 permit?
 10 MR. ZUROFSKY: Yes, air permit.
 11 A. Torrance air compliance survey,
 12 56,900.
 13 Q. The next one done on Exhibit 69 is
 14 lock out tag out verify; right?
 15 A. In the table?
 16 Q. Yes.
 17 A. Yes.
 18 Q. If you notice just before we get to
 19 the numbers, if you look in the left-hand
 20 column, the one under issue description, it says
 21 there "the facility's lock out tag out verify
 22 system is not formally implemented and
 23 procedures are not being followed consistently."
 24 Do you see that, sir?
 25 A. I see that.

25 (Pages 1127 to 1130)

Page 1131

1 JOHN LEASE - CROSS
 2 Q. There were procedures in place at
 3 the facility with respect to lock out tag out
 4 verify; right?
 5 A. They were inadequate to meet the
 6 OSHA requirements, but --
 7 Q. There were some procedures?
 8 A. Ineffective.
 9 Q. They were not being followed
 10 regularly that is what it says here; right?
 11 A. And they were ineffective.
 12 Q. Didn't say that. Move over,
 13 estimated cost is 30,000. Right?
 14 A. Yes.
 15 Q. How much has Alcoa spent on that
 16 project?
 17 A. \$88,000.
 18 Q. Next one down confined space?
 19 A. I see it.
 20 Q. 23,000 estimate?
 21 A. Yes.
 22 Q. How much has Alcoa spent so far?
 23 A. \$59,000.
 24 Q. Turn the page if you will on the
 25 Torrance chart. Estimated cost?

Page 1132

1 JOHN LEASE - CROSS
 2 A. Machine guarding now?
 3 Q. We are on machine guarding.
 4 A. 20,000.
 5 Q. How much has Alcoa spent to date?
 6 A. \$131,000.
 7 Q. You are not done yet; right?
 8 A. I can't say for Torrance.
 9 Q. Next one down, fall protection.
 10 A. Sorry, I am looking at the wrong
 11 table. 20,000.
 12 Q. How much has Alcoa spent to date?
 13 A. 132,000.
 14 Q. Next one down?
 15 A. Electrical safety?
 16 Q. Yes, sir?
 17 A. 30,000.
 18 Q. Then how much has Alcoa spent to
 19 date?
 20 A. 100,000.
 21 Q. Next one down?
 22 A. Mobile equipment.
 23 Q. Estimate 15,000.
 24 A. 15,000.
 25 Q. You spent to date?

Page 1133

1 JOHN LEASE - CROSS
 2 A. 30,000.
 3 Q. Back to tab 41 just to make sure we
 4 completed our journey here.
 5 A. Let me make a comment about these
 6 discrepancies, if I may. The measures that were
 7 taken following the survey typically would have
 8 fixed the problem. It is basic industrial
 9 operations. When you see an issue and it is
 10 noncompliance you do and fix it. This isn't
 11 much more complicated than that.
 12 Q. These were just -- sorry.
 13 A. So as we continue, you know, we
 14 identify noncompliance issues at any of these
 15 facilities, once it is confirmed we fix it. We
 16 can't continue to operate in noncompliance while
 17 we wait for cost estimates to be exchanged and
 18 reviewed. We have to operate in compliance to
 19 protect the people or meet our permit limit.
 20 That is the fact of industrial operation in a
 21 regulated environment.
 22 Q. These were preliminary cost
 23 estimates; right?
 24 A. Preliminary. In 2003 they were
 25 preliminary.

Page 1134

1 JOHN LEASE - CROSS
 2 Q. They were later updated based upon
 3 work Alcoa did in terms of surveys and
 4 assessments and all that, we looked at some of
 5 those?
 6 A. Updated?
 7 Q. Yes.
 8 A. I think in reality what happened
 9 was they did a survey identified compliance
 10 issues, they went and fixed it. I don't know
 11 that it included a scope of work, work plan.
 12 These are very basic types of compliance issues
 13 that require basic fix.
 14 Q. Like -- sorry?
 15 A. So, facilities just undertook these
 16 corrective actions.
 17 Q. Like the box of documents we saw
 18 with respect to the Fullerton machine guarding
 19 with a sheet for every machine; right?
 20 A. Yes.
 21 Q. Again, that is what Mr. Miller was
 22 asking you for was updated and finalized cost
 23 estimates; right?
 24 A. That was a box that contained a
 25 survey for every machine. I am not sure, I

26 (Pages 1131 to 1134)

Page 1135

JOHN LEASE - CROSS

don't think every machine has undergone corrective action at this point, as I mentioned earlier. So a subset of that box was likely under corrective action.

Q. But those pages in those machines we saw as Judge Stapleton asked you yesterday have dollar signs of potential costs associated with them; right?

A. Yeah. I will point out that costs to correct the noncompliance situation. These issues needed to be addressed and recovered under the indemnity.

Q. That is the updated cost information you and Mr. Harvey promised to provide to Fairchild; right?

A. I didn't promise to provide that.

Q. Let's look at your letter on St. Cosme before we take a break since we have to make sure we nailed this down. Your letter on St. Cosme, tab 12, second paragraph.

A. Okay.

Q. You say in the second paragraph "As the cost estimates are updated and finalized we will communicate this information to Fairchild

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JOHN LEASE - CROSS

Corporation."

Do you see that?

A. Yes, I do.

Q. You did promise to provide that type of information for the St. Cosme facility, yes?

A. That might have been my intent in April of 2003. You know, I can't say we provided a project by project, machine by machine cost estimate for everything we were doing.

The fact is when we started this work the basis was we would not have any corrective action follow-up unless it was justified based on regulatory noncompliance. I can say that that is the process we followed.

So I'm confident the money that has been spent to fix these noncompliances is in fact justified under the agreement.

If we didn't send Fairchild every single piece of paper, you can blame us for poor document management or inability to transmit documents when needed. But in fact the main focus of our efforts were to come into

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JOHN LEASE - CROSS

compliance. We felt the actions we were undertaking were justified based on the noncompliance issues we found.

Q. Sir, we finished, let's break now.

We just want to confirm we now looked at every letter that is referenced in the last two pages of tab 41; right?

A. Could you ask your question again, sorry.

Q. Tab 41, remember we were looking at the last two pages of that chart you and Mr. Chesler had gone over.

A. Yes.

Q. I want to confirm we have now looked at this morning every letter listed there for any of these items because I don't want to repeat for each of the items because the letters do repeat.

A. On page 2.

Q. Page 2 and 3, all the compliance issues we talked about when we first started this journey?

A. Did we get through them all?

Q. Yes. They repeat. That is why I

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JOHN LEASE - CROSS

am asking you. I want to make sure you agree with me.

THE ARBITRATOR: Pages 2 and 3?

MR. ZUROFSKY: Of Exhibit 41.

THE ARBITRATOR: The ones we have seen included all of the ones on these two pages?

MR. ZUROFSKY: Right. That is what I am confirming with the witness.

THE ARBITRATOR: Well, they will tell you if that is not the case.

MR. ZUROFSKY: Fair enough. Then let's break.

(Recess taken.)

MR. CHESLER: Just a housekeeping, your Honor, Mr. Zurofsky and I have been conferring during the break we are trying to manage the logistics of this which are getting ever more complicated. We agreed as follows, subject to being acceptable to you: We have our next witness who is an expert by the name of Powell who has an unmoveable obligation tomorrow, out of state, in Florida involving the EPA in a completely unrelated matter which he

27 (Pages 1135 to 1138)

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Page 1139

1 JOHN LEASE - CROSS
2 can't move.
3 To accommodate that, since this is
4 moving not quite at the pace we anticipated, we
5 agreed at the lunch break if we are not done
6 with Mr. Lease, we will subject to your approval
7 suspend the testimony of Mr. Lease at whatever
8 stage it is, put Mr. Powell on right after lunch
9 so he can make a plane this evening to West
10 Florida. Whenever Mr. Powell is done we will
11 immediately resume with Mr. Lease wherever we
12 left off.

13 MR. ZUROFSKY: Mr. Lease is one of
14 the witnesses, not just one of their witnesses,
15 he is one of our witnesses, too. We are fine
16 with that considering we have been doing this
17 sort of combined anyway.

18 THE ARBITRATOR: Fine. You do
19 seem to be moving a little slowly from the point
20 of view of concluding Alcoa's case this week.
21 We have several other witnesses.

22 MR. ZUROFSKY: Right. Let's try to
23 pick up the pace now, not speaking too quickly,
24 I know, Tammey, you get upset.

25 Q. Mr. Lease, we covered the letters

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1 JOHN LEASE - CROSS
2 this morning and I wanted to turn now to the
3 asterisk items that are on the chart. The
4 chart, there is a series of asterisk charts.
5 Let's turn to the one on 36, tab 36.

6 A. Okay.

7 Q. If you remember we were talking
8 this morning about the compliance issues,
9 compliance claims and we identified that the two
10 sources of notice that you had put out there
11 were those series of letters we looked at this
12 morning then the Phase Is right for the
13 compliance claims?

14 A. Yes.

15 Q. So, the asterisk items as we went
16 over yesterday with your cover letter as you
17 said were not the subject of prior notice;
18 right?

19 A. That's correct. That is what it
20 says here.

21 Q. You were thereby, by virtue of the
22 letter, notifying Fairchild about the asterisk
23 items; right?

24 A. Well, I think as we pointed out
25 when we went through my discussion with

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1 JOHN LEASE - CROSS
2 Mr. Chesler, there were some items on here that
3 had been noticed to Fairchild, as I recall, City
4 of Industry, for example. Then we kind of
5 wondered if these were actually liability
6 notifications or notice of environmental
7 conditions.

8 So, I'm not quite sure if you're
9 asking was this a notice of liability or notice
10 of environmental condition.

11 Q. Let's do all three. All three
12 categories of notice.

13 A. Yes.

14 Q. The third category first, notice of
15 liability. I am just referring now to the
16 asterisk items. The other items are subject of
17 the some of the letters and environmental
18 issues. Just the asterisk items which are all,
19 as you understand it, compliance issues, one or
20 two I think might be related to investigation.
21 I am putting that aside. They are compliance
22 issues by and large; right?

23 A. The ones with asterisks?

24 Q. Yes.

25 A. Well, there are the entries that

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1 JOHN LEASE - CROSS
2 did not have the 8 digit project number.

3 Q. That is a better way to do it.

4 A. The asterisk items that follow the
5 general convention of, you know, 5 digit number
6 followed by 3 digit number would be compliance
7 issues with the exception of a few. There is
8 some stuff in here that got carried into the
9 project, projects that later became
10 predominantly compliance issues that were
11 related more to remediation.

12 Q. For Judge Stapleton's sake maybe we
13 can clarify what we mean by project numbers.
14 You will see on these charts there are two
15 formats of project numbers. For example, the
16 first whatever however many, I guess 18 or so
17 are listed with a 5 digit newspaper, a dash and
18 3 digit number. That continues through the
19 chart. Then there is a separate type of project
20 number below that.

21 Mr. Lease, you tell me, the second
22 type of project number, the one that doesn't
23 have 5 digits and the dash and 3, those are
24 contamination related projects?

25 A. Yes. The P numbers.

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JOHN LEASE - CROSS

Q. The P numbers.

A. Right.

Q. So those are contamination projects which we talked about earlier just putting aside for now, still talking about compliance. I am focused on the compliance items. The asterisk items here in the three buckets of notice you were clearly telling Fairchild here notice as you called it of liability for those items. You are saying here is the bill here is how much we spent?

A. This is how much we spent for these projects, correct.

Q. Is it your testimony you are also telling them about the other two buckets of notice in this letter for those projects?

A. No. It is not my understanding. This table was put together in anticipation of the mediation session I look back at this now, for example the first asterisk entry is confined space compliance 009. I think what we are saying here we are noticing that 23,495 was spent on that project. That is a specific project as opposed to a condition.

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JOHN LEASE - CROSS

THE ARBITRATOR: Which one are you looking at, first item on the top, City of Industry?

THE WITNESS: City of Industry. The project number is 36010009.

Q. Perhaps it is easier, I know we had that letter on City of Industry you went over with Mr. Chesler. Let's look at another facility just because it doesn't have perhaps that complication. We will come back to City of Industry.

Let's do Simi Valley a second which is not subject of any letters; right? That is on page 5 of 6 in the chart?

A. The gap analysis letter?

Q. No. The chart in tab 36 of the project and their project numbers. Amounts spent?

A. I am on Simi Valley.

Q. You see. 5001097 there is a couple of items there. Not that many. We can probably deal with this pretty quickly.

THE ARBITRATOR: When you use the phrase compliance, are there areas of

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JOHN LEASE - CROSS

environmental compliance; there are, right?

MR. ZUROFSKY: Yes.

THE ARBITRATOR: Some of them are environmental, some of them are work safety?

MR. ZUROFSKY: Yes, your Honor.

THE ARBITRATOR: But compliance as opposed to contamination?

MR. ZUROFSKY: Correct. That is the divide we are drawing right now. Within compliance there are different items that might fall into different categories.

Q. But Simi Valley pretty manageable number of claims here. So the asterisks, there is three asterisks items there in Simi Valley. Do you see that?

A. Yes.

Q. What does the asterisk mean in this chart for Simi Valley?

A. What the asterisk means is that that project, let's look at confined space compliance which is 002, that specific project was being noticed for liability to Fairchild.

Q. Is it your testimony that project had previously been provided, Fairchild had

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JOHN LEASE - CROSS

previously been provided notice with respect to that project in either of the first two categories of notice we discussed?

A. Yes. Confined space compliance was a common finding across multiple Fairchild facilities in terms of noncompliance. So now we have a specific project at Simi Valley that is addressing that compliance issue.

Q. It is your testimony the source of that notice on the first two buckets was one, either the letters we looked at this morning; right?

A. Yes.

Q. Or the Phase Is; right?

A. That is my general recollection.

Right.

Q. Anything else you can think of that might have provided the notice other than the letters we talked about this morning and Phase Is for Simi Valley?

A. For Simi Valley, I don't recall there was anything else.

Q. Now I want to look at the Phase I for Simi Valley. My hope in this exercise we

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Page 1147

1 JOHN LEASE - CROSS
2 don't go through all the Phase Is. Let's see if
3 we can do it with Simi Valley 424.

4 MR. CHESLER: Your Honor, may I
5 just through the court make a comment which may
6 be of value to Mr. Zurofsky, maybe save us time
7 or maybe not.

8 The witness testified before he
9 can't from the witness stand pick out what was
10 in that 10 percent that wasn't, the 10 percent
11 of the items that were not included in the
12 summary chart for which this -- behind tab 40
13 for which tab 41 is backup.

14 I can represent to the court this
15 particular one which Mr. Zurofsky is on right
16 now, which is confined space compliance at Simi
17 Valley is in fact one of the items in that 10
18 percent. So if the point of this
19 cross-examination is to say I can't find a
20 reference in the Phase I report for Simi Valley
21 to confined space, I will stipulate it is not
22 there.

23 Our point is different, as I assume
24 the court understands. That is why it is in the
25 10 percent. We can try to do that for others if

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1 JOHN LEASE - CROSS
2 you like.

3 Since the witness says he doesn't
4 know, taking an hour to make that point seems to
5 me not to be a proper use of time.

6 MR. ZUROFSKY: I am fully in
7 agreement. If you can identify what items that
8 are those in the Phase Is that comprise those 10
9 percent. I am happy not to go over those.

10 MR. CHESLER: We will pull that
11 together and provide it. I know that is one of
12 them.

13 MR. ZUROFSKY: How about the other
14 two for Simi Valley, other two asterisked items
15 fall protection and electrical compliance?

16 MR. CHESLER: They are not. One
17 of the ways you can tell, your Honor, if you
18 look at tab 41, which is the backup to tab 40
19 you will see those entries are not there in the
20 backup for Simi Valley. That is therefore,
21 since that is the backup with each of the
22 numbers that adds up to the 14 million and
23 change that represents the 90 percent, it is
24 kind of self-evident on its face. I am trying
25 to save us time.

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1 JOHN LEASE - CROSS
2 MR. ZUROFSKY: I appreciate that.
3 There is a lot of these that go on. I am happy
4 not to do Simi Valley.

5 THE ARBITRATOR: Simi Valley, you
6 are referring to chart 41?

7 MR. CHESLER: Yes.

8 MR. ZUROFSKY: Yes.

9 THE ARBITRATOR: It does appear in
10 here somewhere.

11 MR. ZUROFSKY: That is a different
12 item that is not asterisked item, 625. My
13 point, just to be clear, it is our position that
14 none of the asterisk items notice for the first
15 two buckets are provided in the Phase Is at all
16 for any of the asterisk items. Maybe one or two
17 that is slipping my mind. They are not in the
18 Phase Is.

19 I am trying to avoid having to take
20 the court's time where we go through all the
21 Phase Is, and witness' time as well. The
22 witness said --

23 THE ARBITRATOR: Why don't you
24 look at this at lunch time or something, maybe
25 you can agree on, you already said on Simi

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1 JOHN LEASE - CROSS
2 Valley.

3 MR. CHESLER: Yes. As I say, we
4 will give counsel a list of which particular
5 items were in the 10 percent as we said and the
6 witness testified, the 10 percent was intended
7 to represent specific items for which we don't
8 believe there was any notice that addressed that
9 item as opposed to the issue.

10 THE ARBITRATOR: Prior notice for
11 that project and that item.

12 MR. CHESLER: We may disagree on
13 what the requirements under the contract are,
14 that is a different question.

15 MR. ZUROFSKY: I am happy to look
16 at the list. If there is any left over after
17 that I will reserve my rights to ask the witness
18 about it if that is fine.

19 MR. CHESLER: Fine.

20 Q. We can move off the asterisks for
21 now. One before we do, in St. Cosme, Mr. Lease,
22 there is a couple projects one titled pedestrian
23 and forklift traffic organization; do you know
24 which one I am talking about?

25 A. Which table are you looking at?

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1 JOHN LEASE - CROSS
 2 Q. Sorry, tab 36, page 2 of 6.
 3 A. Do you have the number.
 4 Q. Bates number 50 -- tab 36, Bates
 5 5000195. I am looking at project 36230-036?
 6 A. Okay.
 7 Q. What was going on with the forklift
 8 traffic organization what is that project about?
 9 A. That is a, I believe it relates to
 10 mobile equipment. I don't know the details.
 11 Q. Forklifts moving around the plant?
 12 A. Forklifts moving around. They need
 13 to provide for separation of pedestrians and
 14 forklift traffic for safety so the forklifts
 15 don't run people over.
 16 Q. Is Alcoa still claiming that as
 17 indemnifiable expense under the agreement?
 18 A. Yes.
 19 Q. The next one, smoking area?
 20 A. Smoking area?
 21 Q. Yes. Next project down.
 22 A. Right. I don't have specific
 23 knowledge of that particular project.
 24 Q. Was it building a fenced off area
 25 so people can smoke?

Page 1152

1 JOHN LEASE - CROSS
 2 A. I don't know.
 3 Q. Is Alcoa still claiming that for
 4 indemnification under the agreement?
 5 A. We are claiming it, yes.
 6 Q. Go down 36230-052?
 7 A. Okay.
 8 Q. Traffic compliance.
 9 A. Yes.
 10 Q. What is that?
 11 A. Again, industrial environment
 12 traffic usually refers to mobile equipment.
 13 That is really the extent of my knowledge on
 14 this particular project.
 15 Q. You can put that to the side,
 16 obviously pending the list of items that comes
 17 from your counsel.
 18 Let's switch gears talk about
 19 subsequent investigations on the contamination
 20 side. Okay.
 21 A. Okay.
 22 Q. That is everything in the binders
 23 past Volume 1; right?
 24 A. Volume C?
 25 Q. Volume C. Binder C.

Page 1153

1 JOHN LEASE - CROSS
 2 A. The blue ones?
 3 Q. Yes.
 4 A. Yes.
 5 Q. Plus the documents above it.
 6 A. Phase IIs. To the extent the Phase
 7 Is discuss environmental contamination.
 8 Q. I believe you testified on
 9 direct-examination that the Phase II scopes of
 10 work were provided to Mr. Hodge and that the
 11 Phase IIs were later provided to Fairchild;
 12 right?
 13 A. Phase IIs, what was the last part
 14 of your statement?
 15 Q. The Phase IIs themselves were
 16 later, the reports themselves were later
 17 provided to Fairchild?
 18 A. Yes.
 19 Q. The Phase IIs, I think I heard your
 20 testimony is the basis on which you consider to
 21 be the notice to Fairchild of the condition and
 22 of the proposed response going forward with
 23 respect to contamination investigations; is that
 24 right?
 25 A. Yes.

Page 1154

1 JOHN LEASE - CROSS
 2 Q. Both buckets one and two?
 3 A. Yes.
 4 Q. So, it is your testimony that not
 5 only does the Phase IIs say here are the
 6 conditions at the facility, also they say here
 7 is what we are going to do about them?
 8 A. Yes.
 9 Q. Let's look at what you said when
 10 you sent the Phase IIs to Fairchild. That is
 11 in, I believe it is in your, is it a tab in your
 12 binder? I think you had it.
 13 MR. CHESLER: I am told the Phase
 14 IIs actually came from ERM. They weren't
 15 transmitted from Alcoa.
 16 Q. In the correspondence binder I put
 17 in front of you, Mr. Lease.
 18 A. Okay.
 19 Q. Under multiple facilities the last
 20 tab again we were looking at earlier. I am
 21 looking now at three letters in -- two letters
 22 in, the second letter, November 3, 2003 letter.
 23 A. Okay.
 24 Q. To Mike Hodge, do you see it, sir?
 25 A. Yes.

31 (Pages 1151 to 1154)

Page 1155

1 JOHN LEASE - CROSS
 2 Q. Bates stamped FAIR 50000967; right?
 3 A. Yes.
 4 Q. This is the letter you sent to Mike
 5 Hodge which was providing notice of liability
 6 for the Phase IIs; right?
 7 A. Yes.
 8 Q. Any request in this letter you sent
 9 to Mr. Hodge that says let's discuss what the
 10 findings are or what we are going to do next?
 11 A. There was no requirement that I --
 12 I said please contact me with any questions
 13 regarding this information or my email.
 14 Q. That is what it is, that's what
 15 you're saying?
 16 A. That is what is said here.
 17 Q. So you got a response from
 18 Fairchild; right to that letter?
 19 A. Yes, I did.
 20 THE ARBITRATOR: Let me just read
 21 this letter, please. Thank you.
 22 Q. Mr. Lease, before moving on, Phase
 23 IIs did not contain recommendations from ERM;
 24 did they?
 25 A. I think they did.

Page 1156

1 JOHN LEASE - CROSS
 2 Q. Were you here on Tuesday for
 3 Mr. Flanzenbaum's testimony?
 4 A. I don't recall when I was in here.
 5 I was in and out.
 6 Q. I will refer on page 59, I don't
 7 have a copy of the transcript, I haven't
 8 actually been provided with it yet, I haven't,
 9 page 59, 59 lines 4 through 7 Mr. Flanzenbaum
 10 was asked did these reports contain specific
 11 recommendations what to do next?
 12 "Answer: Specifically no, we
 13 basically finalized these reports with our
 14 conclusions." Do you agree with that testimony?
 15 A. I don't particularly agree with
 16 that statement. I think there was enough detail
 17 in these reports, as I understand them, to say
 18 this is where we go next.
 19 Q. You don't recall ERM communicated
 20 recommendations separately from its Phase IIs?
 21 A. They were in the Phase IIs.
 22 Q. No separate recommendations
 23 provided to Alcoa with respect to ERM's
 24 recommendations arising out of the Phase IIs?
 25 A. Recommendations from ERM?

Page 1157

1 JOHN LEASE - CROSS
 2 Q. Yes.
 3 A. It was in the Phase II report. I
 4 don't understand what your question is.
 5 Q. Mr. Flanzenbaum testified on
 6 Tuesday there were separate recommendations made
 7 by ERM to Alcoa about what to do following the
 8 Phase IIs. They were not in the Phase II
 9 reports themselves. Do you recall that
 10 testimony?
 11 MR. CHESLER: Your Honor, I object
 12 to the characterization of the testimony. The
 13 man was on the stand for hours, he said several
 14 different things. I am not going to say what
 15 they are because he is in the middle of
 16 cross-examination. I object to the
 17 mischaracterization of testimony.
 18 Q. Do you recall it?
 19 THE ARBITRATOR: Why don't you
 20 just ask this witness what his understanding is.
 21 The other gentlemen's testimony will stand as it
 22 is. There was a little ambiguity in what he
 23 said, although my understanding there weren't
 24 clear firm recommendations on everything, there
 25 were things that might have been interpreted as

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1 JOHN LEASE - CROSS
 2 suggested. He made some subsequent
 3 recommendations. Whatever it is, it is. This
 4 gentlemen can testify what he knows.
 5 Q. You received the response when you
 6 sent that letter to Fairchild about the Phase II
 7 costs you received actually more than one
 8 response from Fairchild; right?
 9 A. Yes. There were two responses, I
 10 think.
 11 Q. I want to focus on the second
 12 response which is the one I think in your binder
 13 from Mr. Chesler at tab, I believe in tab 18.
 14 A. Looking at Mr. Beckford's letter?
 15 Q. Mr. Chesler's -- yes,
 16 Mr. Beckford's letter, exactly.
 17 A. We are out of your binder now.
 18 Q. Yes. It is also in mind. As I
 19 promised, whenever we can go back to
 20 Mr. Chesler's, we will.
 21 A. Okay. I'm there.
 22 Q. I want to focus on a couple of
 23 things. First off, Mr. Beckford attaches a
 24 chart here that breaks down Fairchild's
 25 interpretations of the Phase IIs that were

32 (Pages 1155 to 1158)

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Page 1159

1 JOHN LEASE - CROSS
 2 provided; correct?
 3 A. Yes.
 4 Q. It comments on those findings of
 5 the Phase IIs; right?
 6 A. Very generally, but it did comment.
 7 Q. Comment. The chart does, so does
 8 Mr. Beckford; right?
 9 A. Yes, he commented on the cost.
 10 Q. The chart does more than that;
 11 doesn't it, sir?
 12 A. Okay.
 13 Q. Does it? Is that your recollection
 14 of the chart, it talks substantively about the
 15 issues at some of the facilities?
 16 A. Three categories he commented on
 17 related to contamination.
 18 Q. With respect to some of the items,
 19 the chart says, I will refer you to page, I have
 20 a different Bates number, Bates page FC 299,
 21 this is category 3 it is talking about?
 22 A. Yes.
 23 Q. Under there he has a symbol system.
 24 I believe this chart actually was prepared by
 25 Mr. Hodge. I will just use Mr. Beckford for

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1 JOHN LEASE - CROSS
 2 convenience. There is a symbol system you see
 3 there Y, N, NN?
 4 A. Yes, I do.
 5 Q. I want to look at Y. Under Y the
 6 chart says "Costs of this portion of the report
 7 may be appropriate for indemnification depending
 8 on what if any remedial action is
 9 recommended/required." Do you see that?
 10 A. Yes.
 11 Q. Is Fairchild in this letter
 12 communicating to you it had analyzed the Phase
 13 IIs and with respect to at least some of them it
 14 thought maybe there might be future work needed
 15 to be done; is that right?
 16 A. I really don't know what his
 17 comments here was. We are getting into an area
 18 now where I think the experts on the Phase II
 19 investigations and remedial investigation
 20 follow-ups are really the experts that need to
 21 discuss what actions follow the recommendations
 22 in the Phase II.
 23 Q. Who did you send the chart to when
 24 you got it, if any, which experts did you send
 25 the chart to?

Page 1161

1 JOHN LEASE - CROSS
 2 A. I believe I sent it to John George
 3 and perhaps others in the remediation group.
 4 THE ARBITRATOR: What charts are
 5 you referring to?
 6 MR. ZUROFSKY: I am talking to the
 7 chart attached to Mr. Beckford's letter.
 8 THE ARBITRATOR: Mr. Beckford's
 9 chart?
 10 MR. ZUROFSKY: Yes. Sorry. There
 11 is a chart in the main letter which deals with
 12 the costs. Then there is a chart attached which
 13 provides comments analyzing the Phase II
 14 results.
 15 THE ARBITRATOR: Right.
 16 MR. ZUROFSKY: I was focused
 17 specifically on the third category of comments
 18 which begins on page FC 299 in which for some
 19 portion of the Phase II those designated by the
 20 symbol Y, Fairchild is saying cost of this
 21 portion of the report may be appropriate for
 22 indemnification, depending on what if any
 23 remedial action is recommended/required.
 24 Q. I am asking you, do you understand
 25 that to be Fairchild's commenting on the Phase

Page 1162

1 JOHN LEASE - CROSS
 2 II results?
 3 A. It's a comment.
 4 Q. Do you see it says there may, I can
 5 show you an example if you like, but there are
 6 some examples as we go through that chart in
 7 which the comments is there may be a need for
 8 future investigation or remediation. Do you
 9 recall that there is comments to that effect?
 10 A. I haven't looked at this chart in
 11 two or three years. Do you want to point out
 12 specific areas? I will be glad to look at them.
 13 Q. I am happy to do that, although you
 14 did go through it with Mr. Chesler yesterday.
 15 MR. CHESLER: Again, your Honor --
 16 MR. ZUROFSKY: The document I am
 17 saying. He said the document.
 18 MR. CHESLER: You just said the
 19 chart.
 20 Q. Go to the same page we're on,
 21 right. The first entry.
 22 A. Which page are we on now.
 23 Q. The one we were just on FC 299.
 24 First entry 9 A, the bottom, do you see the
 25 bottom of the comments section?

33 (Pages 1159 to 1162)

Page 1163

1 JOHN LEASE - CROSS
 2 A. Yes.
 3 Q. "The source of this impact is not
 4 entirely clear from Alcoa's assessment." Do you
 5 see where I'm reading?
 6 A. Yes.
 7 Q. "However it presents an issue
 8 which should be followed up" do you see that?
 9 A. Yes, I see that.
 10 Q. There is Fairchild saying that this
 11 might be an issue to follow-up; right?
 12 A. That's what they're saying.
 13 Q. I want to return your attention to
 14 the cover letter from Mr. Beckford, which is FC
 15 296. That comment was with respect to the
 16 Torrance facility. We can look back but it was
 17 with respect to the Torrance facility.
 18 Let's look at FC 296, end of
 19 Mr. Beckford's cover letter with that chart.
 20 Are you with me?
 21 A. I follow you so far.
 22 Q. The last paragraph before the
 23 asterisks at the end there it says "On those
 24 sites as to which we agree there should be
 25 further investigation, as noted in attachment 1

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1 JOHN LEASE - CROSS
 2 under category 3, please ensure that the actual
 3 investigative measures are first discussed with
 4 our designated representative, Michael Hodge as
 5 required by section 11.6 C of the Acquisition
 6 Agreement." Do you see that, Mr. Lease?
 7 A. Yes.
 8 Q. So, is Mr. Beckford saying to you
 9 here, that for those items where, those
 10 facilities where there might be need for further
 11 investigation, pursuant to 11.6 C which is
 12 something we looked at yesterday, make sure you
 13 talk to us before you go and do the
 14 investigating; do you see that?
 15 A. Yes.
 16 Q. Is that what he is saying there, is
 17 that what you understood him to mean?
 18 A. He is asking that we discuss these
 19 with Mike Hodge.
 20 Q. Before doing it; right?
 21 A. Before doing it, correct.
 22 Q. One of the ways one would discuss
 23 investigation would be to provide proposals and
 24 scope of work before doing the work; right?
 25 A. Could be one way.

Page 1165

1 JOHN LEASE - CROSS
 2 Q. That is what you did with the Phase
 3 IIs; right?
 4 A. Yes, we gave the Phase II scope of
 5 work to Mike.
 6 Q. It is your view, as I understand
 7 your testimony, that someone looking at the
 8 Phase IIs would know what the investigation
 9 follow on were going to be in terms of scope;
 10 right?
 11 A. A person that is a professional in
 12 that field should know that yes.
 13 Q. Should know the scope of those
 14 investigations?
 15 A. To know the scope?
 16 Q. Yes. The scope of those
 17 investigations.
 18 A. Not they know the scope. But they
 19 would certainly know what the actions were that
 20 would be needed, I would think. Sampling,
 21 groundwater wells, that kind of thing.
 22 Q. Is that the reason why you didn't
 23 respond to Mr. Beckford before pursuing
 24 investigations by saying here are scopes of work
 25 or anything like that?

Page 1166

1 JOHN LEASE - CROSS
 2 A. I think we did provide scopes of
 3 work to Fairchild.
 4 Q. Let's look at some documents.
 5 This has been I believe previously introduced.
 6 I am not sure if we have additional copies up
 7 there however. It is 134. Do you see
 8 Exhibit 134 there, Mr. Lease?
 9 A. Yes.
 10 Q. Who is Eric Hendrix?
 11 A. Eric is a consultant who works for
 12 Mission Geoscience.
 13 Q. Mission Geoscience is the firm of
 14 environmental professionals Alcoa hired to do
 15 the follow-up investigations to the Phase IIs
 16 for the Southern California sites; right?
 17 A. I believe that's true, yes.
 18 Q. Who is Larry McShae?
 19 A. Larry is a member of the
 20 remediation work group, works for Alcoa.
 21 Q. Now, he was in charge, was he not,
 22 of the follow-up investigations at the Southern
 23 California facilities, Fasteners facilities?
 24 A. At this time, I believe he was
 25 overseeing the Southern California facilities.

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1 JOHN LEASE - CROSS

2 Q. So, let's turn to the last, this is
3 the time period, just so we have it is October
4 2003; right?

5 A. Yes.

6 Q. That is after or right around the
7 time the Phase IIs are being communicated to,
8 right before, excuse me, communication of Phase
9 IIs go to Fairchild?10 A. I recall it is about October,
11 November.12 Q. I want to start with the last email
13 chronologically, sorry first email
14 chronologically, last one on the page 00050292.

15 A. Okay.

16 Q. This is from Mr. McShae to
17 Mr. Hendrix. He says "I met with John Lease and
18 Sandy Harvey today to cover a number of issues
19 related to the former Fasteners Fairchild sites
20 in Southern California, a couple things for you
21 to note: 1, I committed to John that we would
22 begin preparing a monthly report for him and the
23 others involved to track both progress at the
24 sites and expenditures. Format is open at this
25 point" so on and so forth.

Page 1168

1 JOHN LEASE - CROSS

2 "Number 2, I told John we would
3 prepare for him to send to Fairchild a document
4 that describes the overall plan to address each
5 of the issues identified to date at the sites.
6 This would basically be a refinement of the
7 bullet lists you have already started assembling
8 and sent along with the CEAT estimates." CEAT
9 estimates were Alcoa's estimates for future
10 costs, right?11 A. I am not sure what the CEAT
12 estimates encompassed as far as costs.13 Q. Generally speaking a CEAT estimate
14 however is estimate of future cost; is it not?15 A. Cost for what I'm not sure.
16 Remediation. You have to go back to talk to
17 Mr. George about that.18 Q. "This is also the vehicle by which
19 we can make them aware of our intention to
20 contact the RWQCB on Temple as a necessary step
21 moving forward" do you see that there?

22 A. I see that.

23 Q. Do you recall having that meeting
24 with Mr. McShae and Mr. Harvey?

25 A. Frankly I don't at this point in

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1 JOHN LEASE - CROSS

2 time.

3 Q. Let's move forward in time, back
4 one page in the email to fair 50291. Bottom
5 email on that page.

6 A. Yes.

7 Q. "One item I forgot to mention last
8 night" this is from again Mr. McShae to
9 Mr. Hendrix.

10 THE ARBITRATOR: Where are you?

11 MR. ZUROFSKY: Sorry, your Honor,
12 page before which is the next email in time.
13 Page 50291. Mr. McShae writes again "One item I
14 forgot to mention last night, John Lease will
15 shortly be sending the ERM reports to Fairchild
16 and asked that if we see anything in there that
17 we are not in agreement with we let him know as
18 soon as possible. So if you have noticed
19 anything from what you have seen so far, let me
20 know."

21 Q. Do you see that, Mr. Lease?

22 A. I see that.

23 Q. These are the two, this is the
24 Mission Geoscience, the consultant that Alcoa is
25 hiring to do the follow-up investigations and

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1 JOHN LEASE - CROSS

2 Mr. McShae who is overseeing those
3 investigations talking about whether or not they
4 disagree with the, if there is anything in the
5 Phase II that they are not in agreement with;
6 right?

7 A. That's what this says.

8 Q. Mr. McShae says that you asked if
9 they have any such disagreement about that
10 stuff, that they provide it to you so that you
11 can, before sending the reports to Fairchild, is
12 that right, before ERM sending the reports to
13 Fairchild?14 A. I am looking for where it says
15 that.16 Q. It says "John Lease will shortly be
17 sending the ERM reports to Fairchild and asked"
18 this is Mr. McShae saying you asked, that if we
19 see anything in there that we are not in
20 agreement with we let him know as soon as
21 possible.

22 A. Okay.

23 Q. Does this indicate, do you recall
24 asking Mr. McShae for him and Mr. Hendrix,
25 people who are responsible for these further

35 (Pages 1167 to 1170)

Page 1171

1 JOHN LEASE - CROSS
2 investigations if there is anything they
3 disagreed with about the ERM reports they should
4 tell you about it before you send the reports to
5 Fairchild?

6 A. I believe so. Yes.

7 Q. Let's move up in the chain,
8 Mr. Hendrix replies, he says "Will do. How soon
9 before John intends to submit the ERM reports to
10 Fairchild?"

11 Then he goes on to say, "Regardless
12 of the findings or opinions expressed by ERM
13 within their documents, it seems to us that
14 Alcoa clearly has the right to agree or disagree
15 and proceed with whatever course of action you
16 believe is appropriate, given the data. This is
17 particularly true of the three sites, Torrance,
18 Fullerton and Unruh for which regulatory
19 involvement may be inappropriate or at a minimum
20 premature. The CEAT projections and bullet
21 lists which mission has prepared obviously
22 reflect this."

23 At this time had Mission prepared
24 CEAT projections and bullet lists that reflect
25 the fact they might disagree with ERM?

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1 JOHN LEASE - CROSS
2 A. I was not aware they had been
3 prepared.

4 Q. Mission is clearly qualifies as
5 environmental professionals on your definition;
6 right?

7 A. I would say yes.

8 Q. They did the work for Alcoa; right?

9 A. Yes.

10 Q. Let's move forward again in time to
11 the next page, Mr. McShae responds. Again they
12 are talking about ERM Phase IIs; right, sir?

13 A. Yes.

14 Q. Mr. McShae respond "I think the
15 main issue here if a contractor we retained to
16 do the work came up with conclusions that we are
17 not in agreement with it would be prudent for us
18 to point this out now to Fairchild so that if we
19 move forward in a manner that is inconsistent
20 with what our Phase II contractor has
21 recommended there is some documentation that
22 Fairchild has been notified. Focus should be on
23 big picture issues and not the details."

24 Do you see that?

25 A. Yes.

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1 JOHN LEASE - CROSS

2 Q. Is it your understanding that does
3 this reflect that Mr. McShae's -- strike that.

4 So, at this time, this is still
5 prior to sending the Phase IIs to Fairchild;
6 right?

7 MR. CHESLER: Your Honor, excuse
8 me. So long as we were talking about emails
9 that purported to refer to conversations with
10 Mr. Lease, I remained silent. But now we are
11 talking about conversations between or among
12 some consultants, there is no indication
13 Mr. Lease ever saw this, he is not copied on any
14 of this string. He is just reading him
15 documents and asking him to comment on it. That
16 is not cross-examination.

17 THE ARBITRATOR: Mr. McShae is an
18 Alcoa person.

19 MR. ZUROFSKY: Alcoa. Yes. Your
20 Honor, the point of this, it started if you
21 recall when Mr. Lease said he thought an
22 environmental professional would read the ERM
23 reports --

24 THE ARBITRATOR: I understand.

25 MR. ZUROFSKY: These are the

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1 JOHN LEASE - CROSS
2 environmental professionals.

3 THE ARBITRATOR: Would you repeat
4 the last question.

5 Q. I will move on to the next topic.

6 THE ARBITRATOR: I think you can
7 ask him questions about whether he agrees or
8 disagrees, whatever conclusions he draws from
9 it.

10 MR. CHESLER: I wouldn't have
11 objected had that been the question. It wasn't.

12 Q. Let's move up in time again. Now
13 we get Mr. Hendrix's response to Mr. McShae
14 about ERM reports. "How soon does John intend
15 to send the ERM reports to Fairchild?" Do you
16 see that?

17 A. Yes.

18 Q. Then it says "In a general big
19 picture sense, all four sites require more
20 characterization than ERM suggests in their
21 Phase II reports. This is reflected within our
22 CEAT projections." Do you see that?

23 A. Yes.

24 Q. Does that refresh your recollection
25 Mission disagreed with the scope of the

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Page 1177

JOHN LEASE - CROSS
 suggestions, as he calls it in the ERM Phase
 IIs?

A. I have no recollection about it
 because I didn't know this was going on. These
 are specific discussions between Mr. McShae and
 Mr. Goltz, all I am doing now is reading what he
 said.

Q. Let's move forward to the first
 page. The email on the top third paragraph.
 This is from Mr. Hendrix again at Mission;
 right?

A. Yes.

Q. He says "Also, we should discuss
 how to best 'abbreviate' these CEAT spreadsheets
 prior to their submission to Fairchild.
 Obviously, some of these numbers will scare them
 a bit, if nothing else. But I would imagine we
 will not need to provide excruciating detail to
 them as to all of our assumption specifics,
 e.g., to avoid inciting a pissing contest over
 numbers of borings/wells at each clock cakes,
 depth of boring/wells, monitoring frequency,
 duration and type of remediation cost and
 frequency of new GAC vessels or other O & M

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JOHN LEASE - CROSS
 specs, etc. etc. I am sure you already have some
 ideas as to how to present this data to
 Fairchild responsibly without violating
 provisions of the your agreement."

Do you recall any discussion, Mr.
 Lease, with Mr. McShae or Mr. Hendrix about the
 topic referenced in the paragraph I just read?

A. No.

THE ARBITRATOR: What was
 Mr. McShae's relationship with you, how did he
 fit into the hierarchy?

THE WITNESS: Mr. McShae was an
 engineer in the remediation work group which
 is --

THE ARBITRATOR: Would he report
 up to you?

THE WITNESS: No. That is a
 completely separate group from the group I'm in.
 They focus strictly on remediation. Once the
 Phase IIs reports were completed and
 investigation moved forward the remediation work
 group took control of that process.

THE ARBITRATOR: Your group is
 called the compliance group?

JOHN LEASE - CROSS
 THE WITNESS: Yes.

Q. Mr. Lease, at the same time as
 Mission was scoping out this work they also, as
 you understand it preparing scope of work and
 proposals about further investigations they were
 going to be doing for Alcoa?

A. I am not sure what the activities
 were with Mission at this time. They were our
 consultant for Southern California. But I
 wasn't involved in that project from a detail
 stand point. It was Larry was running the
 projects in California and Mr. George was
 running the projects in Europe. They were the
 ones that were having direct contact with the
 consultants on these matters.

Q. Would you agree with me, Mr. Lease,
 if Mission was at this time preparing proposals
 and scope of work about future investigation
 that is something under the agreement you should
 have sent to Fairchild?

A. The time I received them from
 remediation folks, yes.

Q. Actually, let's rephrase the
 question. If Mission was preparing scopes of

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JOHN LEASE - CROSS
 work and proposals and documents like that for
 future work, is that something Alcoa under the
 agreement should provide to Fairchild as you
 understand it?

A. I would say yes.

Q. Do you know -- strike that.

We will go through it in more
 detail. Did you ever at any point ask
 Mr. Hendrix to prepare scopes of work and
 proposals for purposes of sending to Fairchild?

A. No.

Q. You don't recall doing that?

A. I don't think I met Mr. Hendrix
 until a few months ago.

Q. Did Mr. McShae ever tell you that
 he was going to have Mission prepare scopes of
 work and proposals so you could send to
 Fairchild?

A. I don't recall what Larry's
 conversations were or emails were regarding
 that.

Q. You don't recall if you had that
 conversation with Mr. McShae or not?

A. No.

37 (Pages 1175 to 1178)

Page 1179

1 JOHN LEASE - CROSS
 2 Q. Let's see if we can help
 3 refresh your recollection. I am going to show
 4 you Mr. McShae's deposition.
 5 THE ARBITRATOR: Does this witness
 6 know whether they were prepared, A, and B
 7 whether they were sent to Fairchild?
 8 MR. ZUROFSKY: Mr. McShae -- that
 9 is fine, we can ask that testimony.
 10 THE ARBITRATOR: You can shorten
 11 it up by asking the question if he knows.
 12 Q. Do you know?
 13 A. No -- wait. What was the question?
 14 THE ARBITRATOR: Do you know
 15 whether these scopes of work were prepared by
 16 Mission Geoscience for the work we are talking
 17 about? They did scopes of work. Proposals.
 18 THE WITNESS: Well, I think
 19 they've done scopes of work. I don't know what
 20 work we have been talking about though because
 21 there has been a lot of work done. We sent a
 22 lot of scopes of work to Fairchild as part of
 23 this project. So --
 24 Q. We'll come back.
 25 A. I am losing track of where we are

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1 JOHN LEASE - CROSS
 2 in the timeline.
 3 Q. Are you aware of any communications
 4 from Alcoa to Fairchild other than
 5 communications sent by you and the Harvey letter
 6 we looked at in which Alcoa communicated to
 7 Fairchild information regarding claims under the
 8 indemnity?
 9 A. Any other correspondence?
 10 Q. Yes.
 11 A. Not that I'm aware of.
 12 Q. So you were the primary person
 13 responsible for that correspondence; right?
 14 A. Yes.
 15 Q. Likely would have gone through you?
 16 A. Pardon?
 17 Q. It likely would have gone through
 18 you if it went to Fairchild?
 19 A. Likely, yes.
 20 Q. Let's move forward. Let's look at
 21 the Torrance facility. I believe some of these
 22 documents may be in your binder with
 23 Mr. Chesler, perhaps not all of them. Let's
 24 look at Torrance.
 25 The first document I want to look

Page 1181

1 JOHN LEASE - CROSS
 2 at is January 25, 2005. I don't think it is in
 3 your binder. We will have to look in our binder
 4 for that.
 5 A. What is the tab?
 6 Q. January 25, 2005. Under Torrance
 7 which is labeled just Torrance. It says
 8 Torrance?
 9 THE ARBITRATOR: Talking about in
 10 your book?
 11 MR. ZUROFSKY: Yes, in our book,
 12 your Honor.
 13 Q. Do you see that, Mr. Lease?
 14 A. Okay. I'm there.
 15 Q. Are you aware of any communication
 16 between Alcoa and Fairchild regarding the
 17 Torrance facility other than the letters we
 18 looked at this morning regarding compliance
 19 issues, we are now on contamination. With
 20 respect to contamination between the letters
 21 with Mr. Beckford regarding Phase IIs and this
 22 letter of January 25, 2005?
 23 A. The transmittal letter with the
 24 Phase IIs?
 25 Q. Right. Mr. Beckford wrote back to

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1 JOHN LEASE - CROSS
 2 you, remember we looked at that document?
 3 A. Yes.
 4 Q. With the chart. So between the
 5 time of that document when Mr. Beckford says
 6 please discuss further investigative measures
 7 with Michael Hodge until this document, January
 8 25, 2005, are you aware of any additional
 9 correspondence regarding contamination issues at
 10 the Torrance facility from Alcoa to Fairchild?
 11 A. I am not aware of any, no.
 12 Q. Let's look what this letter says.
 13 This letter says, "Enclosed for your information
 14 are reports summarizing the result of recent
 15 soil and groundwater investigative activities
 16 undertaken by Alcoa at the former Fairchild
 17 facilities in Torrance and Fullerton." Do you
 18 see that, sir?
 19 A. Yes.
 20 Q. Were you transmitting to
 21 Mr. Beckford at that time reports of
 22 investigations that had already been done?
 23 A. Yes.
 24 Q. That is the first communication to
 25 Fairchild regarding contamination issues at

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1 JOHN LEASE - CROSS
 2 Torrance following his request that you discuss
 3 investigations before doing them with
 4 Mr. Michael Hodge to your recollection; right?
 5 A. That's my recollection.
 6 Q. It also covers Fullerton; right?
 7 A. Pardon?
 8 Q. This letter also addresses
 9 Fullerton; right?
 10 A. Yes.
 11 Q. Turn two pages forward, there is a
 12 chart; right? Do you see that there?
 13 A. Yes.
 14 Q. This chart lists up a bunch of
 15 investigations done at the Southern California
 16 facilities; correct?
 17 A. Correct.
 18 Q. It totaled to \$1 million,
 19 1,073,208; right?
 20 A. Yes.
 21 Q. With respect to, I will still with
 22 Torrance and Fullerton right now.
 23 THE ARBITRATOR: Just a minute.
 24 MR. ZUROFSKY: Sorry, your Honor.
 25 THE ARBITRATOR: Where are you on

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1 JOHN LEASE - CROSS
 2 the chart?
 3 MR. ZUROFSKY: The chart attached
 4 to Mr. Lease's January 25, 2005 letter. A chart
 5 of costs headed table 1 remedial project costs.
 6 Q. These are costs already been
 7 incurred by Alcoa as of the time of this letter;
 8 right, Mr. Lease?
 9 A. Yes.
 10 Q. Therefore contamination related
 11 issues at these facilities; right?
 12 A. That's true.
 13 Q. If you look at, say, Torrance, the
 14 items listed are vadose and groundwater
 15 investigation, do you see that, Phase I and
 16 Phase II?
 17 A. Yes.
 18 Q. Vadose being soil, right, sir?
 19 A. I don't know.
 20 Q. Next one, project coordination?
 21 A. Yes.
 22 Q. Next item is remediation transition
 23 management?
 24 A. Yes.
 25 Q. If you look over review previous

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1 JOHN LEASE - CROSS
 2 remedial consultant documents, do you see that,
 3 site recon, meeting with client?
 4 A. Yes.
 5 Q. You never informed before this
 6 document, did you-Fairchild that Alcoa had fired
 7 EnviroSolve the incumbent consultants and hired
 8 Mission Geoscience for the Southern California
 9 facilities; did you?
 10 A. I am not sure where EnviroSolve
 11 were working at the time, if they were working
 12 on all the California sites or City of Industry.
 13 I know they were working at City of Industry on
 14 the pump and treat system. I don't know if they
 15 were actively employed by Fairchild at the time
 16 at the other facilities or not.
 17 Q. Let's break it down. At the time
 18 of the acquisition EnviroSolve was consultants
 19 doing at least some work at some of the Southern
 20 California facilities when Alcoa took over;
 21 correct?
 22 A. Specifically COI from what I
 23 recall. I don't know about the others.
 24 Q. From that time Alcoa retained,
 25 continued to retain EnviroSolve for a period of

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1 JOHN LEASE - CROSS
 2 time, right, we looked at invoices yesterday
 3 with Mr. Chesler showed you?
 4 A. I think those are for COI.
 5 Q. The answer is yes?
 6 A. Yes.
 7 Q. At some point however, Alcoa
 8 stopped using EnviroSolve; right?
 9 A. That's correct.
 10 Q. Started using Mission Geoscience;
 11 right?
 12 A. Yes.
 13 Q. What I am asking you before Mission
 14 had done any of those investigations, did Alcoa
 15 inform Fairchild that they were switching from
 16 EnviroSolve to Mission Geoscience for the work?
 17 A. No, not that I'm aware of.
 18 Q. We looked at email, Exhibit 134
 19 that showed as early as October 2003, that is
 20 before it is contemplating the Phase IIs
 21 investigations are sent to Fairchild Mission was
 22 already on board; right?
 23 A. You have to talk to Larry about
 24 that. I don't know what the arrangement was
 25 with Mission.

39 (Pages 1183 to 1186)

Page 1187

1 JOHN LEASE - CROSS
 2 Q. I am coming back to entry under
 3 Torrance "remediation transition management"
 4 \$10,000?
 5 A. Okay.
 6 Q. Is that as you understand it cost
 7 related to the transition cost from EnviroSolve
 8 to Mission Geoscience?
 9 A. All I can say what it says here.
 10 They are reviewing previous remedial consultants
 11 documents, site recon, meeting with clients.
 12 That is the extent of what I know about that.
 13 Q. Did you do any efforts to find out
 14 what that was about before sending this on to
 15 Fairchild for indemnification?
 16 A. No.
 17 Q. These are costs already incurred
 18 you sent that bill. Let's move forward in time.
 19 I want to move two letters forward. We can go
 20 to your binder, they are in your binder,
 21 actually. Let's do those. I am looking at tab
 22 32 in your binder. Tab 32. Do you see that,
 23 sir?
 24 A. Yes.
 25 Q. At some point in 2005 the

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1 JOHN LEASE - CROSS
 2 Department of Toxic Substances -- Toxic
 3 Substance Control came to visit the Torrance
 4 facility; correct, sir?
 5 A. Did you say 2005?
 6 Q. Yes.
 7 A. I think it was 2006.
 8 Q. That they came to visit? I am not
 9 referring to when they filed a report. They
 10 came to visit.
 11 A. It says the site visit was
 12 conducted on January 13, 2006.
 13 Q. Let me rephrase. I apologize for
 14 that. At some point in 2005 the Department of
 15 Toxic Substances approached the Torrance
 16 facility and Alcoa about entering into Consent
 17 Agreement with respect to the Torrance facility;
 18 correct?
 19 A. I don't know. I am not aware of
 20 that.
 21 Q. Let's look at some documents and
 22 see if that refreshes your recollection.
 23 (Arbitration Exhibit 431
 24 was marked.)
 25 MR. CHESLER: Does this have a

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1 JOHN LEASE - CROSS
 2 number?
 3 MR. ZUROFSKY: 431.
 4 Q. Do you see this document, sir?
 5 A. Yes.
 6 Q. Let me refer you to page on the
 7 bottom right FAIR 0018018. Do you see that
 8 page, sir?
 9 A. Not yet. Can you say it again.
 10 Q. FAIR 0018018 are you with me?
 11 A. Not yet. Okay.
 12 Q. A letter from department of toxic
 13 substance control. Do you see that?
 14 A. Yes.
 15 Q. Addressed to Douglas McCauley, who
 16 is Douglas McCauley?
 17 A. I think Doug was one of the, he
 18 might have been the second person overseeing the
 19 work that was going on in Southern California
 20 for Alcoa.
 21 Q. Does this reflect -- refresh your
 22 recollection, sir, at least or as early as
 23 September 2005 department of toxic substance
 24 control as referenced here provided the Torrance
 25 facility or Alcoa in general with a draft

Page 1190

1 JOHN LEASE - CROSS
 2 Consent Agreement for that facility?
 3 A. Yes.
 4 Q. It does?
 5 A. Yes.
 6 Q. What is a Consent Agreement with a
 7 government agency?
 8 A. I am not an attorney, but it is
 9 basically an agreement that both parties agree
 10 as to what is going to be done.
 11 Q. A facility doesn't have to enter
 12 into a Consent Agreement by law, it is an
 13 agreement; right, as you understand it?
 14 A. I don't know. I am not a lawyer.
 15 Q. Do you recall there was a debate in
 16 Alcoa regarding whether or not they should enter
 17 into this Consent Agreement for the Torrance
 18 facility?
 19 A. I wasn't party to any conversations
 20 involved around the Consent Agreement, so I
 21 can't say.
 22 Q. Let's see if this refreshes your
 23 recollection. This is 293. Maybe it has not
 24 been previously introduced.
 25 THE ARBITRATOR: Is this a

40 (Pages 1187 to 1190)

Page 1191

Page 1193

1 JOHN LEASE - CROSS

2 Deposition Exhibit?

3 MR. ZUROFSKY: Yes, it is, your
4 Honor, 293.

5 Q. I want to turn your attention to
6 page 79726.

7 MR. CHESLER: What number did you
8 give this exhibit?

9 MR. ZUROFSKY: It was already 293.

10 Q. Look on 79726.

11 A. Okay.

12 Q. Bottom there, there is an exchange,
13 the middle one between Mr. McCauley who you say
14 took over for Mr. McShae?

15 A. McCauley to Hendrix?

16 Q. Yes. You see that?

17 A. Yes.

18 Q. His question is "what happens if we
19 don't sign and just proceed with voluntary
20 clean-up?" Do you see that?

21 A. Yes.

22 Q. He is responding to an email from
23 Mr. Hendrix below; right?

24 A. Yes, appears so.

25 Q. I want to focus on the, turn the

Page 1192

1 JOHN LEASE - CROSS

2 page, the paragraph that spans the page, the one
3 beginning on the bottom line; do you see that?

4 A. Bottom on 79726?

5 Q. Yes.

6 A. I'm there.

7 Q. The bottom line is that "Alcoa will
8 not be able to get any regulatory agency in
9 California to oversee a large site remediation
10 such as Torrance without some form of Consent
11 Agreement." This is Mr. Hendrix talking "If we
12 decided to change direction with our oversight
13 strategy not recommended and switch to the LA
14 Water Board, for example Alcoa would still be
15 asked to do the same sort of thing. No mystery
16 to you CA provides CAL EPA with both a cost
17 recovery mechanism for their oversight and
18 shares the assessment and remedial process
19 follows requirements of the state health and
20 safety code closure and closure itself may be
21 demonstrated to appropriately protective of
22 human health and environment. Of course it also
23 formally puts Alcoa on the legal hook as it was
24 as RP for the clean-up but on the upside it
25 provides Alcoa with an airtight basis for cost

1 JOHN LEASE - CROSS

2 recovery from Fairchild for remedial tasks which
3 are officially required by statute."

4 THE ARBITRATOR: What does RP
5 stands for.

6 Q. Does it stand for responsible
7 party, Mr. Lease?

8 A. I don't know.

9 Q. Do you see that language I just
10 read?

11 A. Yes.

12 Q. Does that refresh your recollection
13 there was debate between Alcoa, its consultants
14 about whether or not discussion about whether or
15 not to entered into this Consent Agreement?

16 MR. CHESLER: Let me interpose an
17 objection. This is an email string between and
18 among people which do not involve Mr. Lease. He
19 is not being impeached with it. He didn't
20 profess to have a failure of recollection about
21 this subject. He said he didn't know about it.
22 There is a difference.

23 THE ARBITRATOR: I guess he is
24 asking does it refresh his recollection as to
25 the subject matter. As to what was occurring he

Page 1194

1 JOHN LEASE - CROSS

2 was in charge of this thing. He either knew
3 about it or he didn't.

4 MR. CHESLER: That is my point.
5 He said he didn't know about it then he shows
6 him a document and says does it refresh his
7 recollection. He didn't recall anything about
8 it.

9 THE ARBITRATOR: I will allow it.

10 MR. ZUROFSKY: Where we are going
11 which is telling Fairchild about these things.
12 So let's move forward.

13 Q. That email is November 9, 2005, we
14 looked at the September letter from the
15 Department of Toxic Substances. Now let's move
16 on to tab 32 in Mr. Chesler's binder. Do you
17 see that, Mr. Lease?

18 A. Tab 32.

19 Q. A letter from you to Ms. Hall dated
20 February 22, 2006; right?

21 A. Yes.

22 Q. What you're saying here the caption
23 report is enclosed for your review. You are
24 sending Ms. Hall a report of investigation or
25 assessment that had already been done at that

41 (Pages 1191 to 1194)

Page 1195

1 JOHN LEASE - CROSS
 2 point; right report by DTSC?
 3 A. Yes. This is report from the DTSC,
 4 right.
 5 Q. The report present findings from
 6 California Department of Toxic Substances
 7 Control DTSC site visit that was conducted
 8 January 13, 2006 at the Torrance, California
 9 facility to verify information contained in the
 10 Phase I environmental assessments checklist
 11 submitted on December 27, 1996 by Fairchild
 12 Fasteners. Do you see that?
 13 A. Yes.
 14 Q. There is some discussion yesterday
 15 about that Phase I checklist from 1996. Do you
 16 know what a Phase I checklist is, sir?
 17 A. No.
 18 Q. You answered I think Judge
 19 Stapleton's question beige saying you thought
 20 the Consent Agreement covered the same subject
 21 matter as Phase I checklist.
 22 A. When did I say that.
 23 Q. You said that yes. I am
 24 confirming --
 25 A. I don't remember saying that. I am

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1 JOHN LEASE - CROSS
 2 not sure that is the case.
 3 Q. You don't know what this particular
 4 Phase I checklist was about; right?
 5 A. I am not even sure, did we talk
 6 about this yesterday?
 7 Q. I think you did. If you don't
 8 know. I am asking you now do you know what it
 9 is about?
 10 A. I don't recall.
 11 Q. Moving forward the rest of the
 12 letter says "The DTSC representatives also
 13 investigated additional solid waste management
 14 units and areas of concern that would require
 15 further investigation." Is there any mention in
 16 this letter on February 22, 2006 about the
 17 Consent Agreement that had been proposed by the
 18 Department of Toxic Substances Control to Alcoa?
 19 A. No. This was a transmittal letter
 20 for this report.
 21 Q. As of February 22, 2006 you didn't
 22 say anything about the Consent Agreement to
 23 Fairchild; had you?
 24 A. As far as correspondence is
 25 concerned?

Page 1197

1 JOHN LEASE - CROSS
 2 Q. Yes.
 3 A. I am not aware of any that was sent
 4 related to the Consent Agreement.
 5 Q. Are you aware of any other
 6 communications to Fairchild about draft Consent
 7 Agreement we looked at two exhibits ago?
 8 A. I don't recall any, no.
 9 Q. That letter from DTSC we saw from
 10 September 2005 is about five months earlier?
 11 A. Which letter.
 12 Q. The one two exhibits ago remember I
 13 put in front of you Exhibit --
 14 A. The one to Doug McCauley?
 15 Q. Yes, sir.
 16 A. September 19, yes, I see that now.
 17 Q. About five months earlier; right?
 18 A. Right.
 19 Q. You don't say anything about that
 20 or Consent Agreement to Ms. Hall in this letter,
 21 February 22, 2006; right?
 22 A. I don't appear to, no.
 23 Q. Let's turn the page -- actually in
 24 your tab I don't think, I think it is two tabs
 25 forward in your book tab 34?

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1 JOHN LEASE - CROSS
 2 A. Okay.
 3 Q. Here is March 2, 2006 you writing
 4 again to Ms. Hall; right?
 5 A. Yes.
 6 Q. Here you are attaching Consent
 7 Agreement; right?
 8 A. Yes.
 9 Q. This is the first time that the
 10 Consent Agreement was mentioned as you
 11 understand it in any communications with
 12 Fairchild; right?
 13 A. I believe so, yes.
 14 Q. What is the date it says is the
 15 effective date of the Consent Agreement?
 16 A. The date of the Consent Agreement?
 17 Q. Yes. There is an effective date
 18 listed in your first paragraph.
 19 A. February 21, 2006.
 20 Q. That is the day before the letter
 21 we just looked at to Ms. Hall on February 22,
 22 2006; right?
 23 A. Yes, it is.
 24 Q. Move forward -- one of the things
 25 you say here second paragraph you say "This

42 (Pages 1195 to 1198)

Page 1199

JOHN LEASE - CROSS

Consent Agreement is result of the DTSC's reported findings which we received on January 13, 2006, and which we forwarded to you on February 22, 2006." Do you see that?

A. Yes.

Q. That is the letter we just looked at before; right?

A. Yes, it is.

Q. But we looked earlier, did we not at the drafts of the Consent Agreement that dated all the way back to September 2005; right?

A. Yes.

Q. So clearly the Consent Agreement was a topic of discussion before the January 13 report; right?

A. Apparently so.

MR. ZUROFSKY: I am about to switch topics, your Honor. It is almost 12:25. You want to do Powell after lunch. Should we do lunch now? Maybe do lunch now we will resume this afterward.

THE ARBITRATOR: How much longer do you think you will be?

MR. ZUROFSKY: It depends again,

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ROBERT L. POWELL - DIRECT

of course, what the items are that are in the 10 percent. If that matches up, that should be fine, then I don't have that much more after that.

THE ARBITRATOR: We will take our lunch break.

(Luncheon Recess: 12:24 p.m.)

AFTERNOON SESSION

1:15 p.m.

ROBERT L. POWELL,

having been first duly sworn by the Notary Public (Tammey M. Pastor), was examined and testified as follows:

MR. SLIFKIN: Pursuant to our arrangement with respect to Mr. Lease, the next witness will be Robert Powell.

DIRECT-EXAMINATION BY MR. SLIFKIN:

Q. Could you please state your full name, sir.

A. Robert Leslie Powell.

Q. I believe it is Dr. Powell; is that right?

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ROBERT L. POWELL - DIRECT

A. That's correct.

Q. By whom are you employed, Dr. Powell?

A. Environ International Corporation.

Q. Who are they?

A. Environ is a private consulting firm that does work in the public health environmental science and engineering and health and safety fields.

Q. What has Environ's involvement been in this matter?

A. We were retained by the Cravath law firm to provide expert opinions with regard to the claims brought by Alcoa under the indemnity agreement.

Q. I would like to hand out Exhibit 137, your Honor. Can you please tell us what Exhibit 137 is?

A. This is Environ's Expert Report in this matter.

Q. Now, if you could turn to tab 34 in this document, please. Do you that, sir?

A. Yes.

Q. A series of CVs, the first one, I

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ROBERT L. POWELL - DIRECT

believe is yours?

A. That's correct.

Q. Obviously this document is already in the record. Perhaps you can briefly explain for us the relevant education and experience that you have relevant to the task at hand.

A. Okay. I am an engineer by training, environmental engineer. I also have graduate degrees in hydrology and in groundwater hydrology.

I have been practicing for about 30 years as a consultant. The vast majority of that has been dealing with projects involving various types of pollution. In particular, since receiving my Ph.D. in 1983 I have focused almost exclusively on issues involving water pollution and soil pollution at industrial facilities. Much of that work was done over a 16 year period when I lived in California. And I did extensive work on many of the largest Superfund sites, hazardous waste management sites and many industrial facilities in California that involved issue of soil and groundwater pollution.

43 (Pages 1199 to 1202)

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Page 1307

1 JOHN LEASE - CROSS
 2 contamination was in fact covered?
 3 A. Yes.
 4 MR. SLIFKIN: Thank you.
 5 MR. ZUROFSKY: I have nothing
 6 further.
 7 THE ARBITRATOR: Thank you very
 8 much, sir.
 9 (Witness excused)
 10 JOHN LEASE,
 11 resumed, having been previously duly sworn, was
 12 examined and testified further as follows:
 13 CROSS-EXAMINATION CONTINUED BY MR. ZUROFSKY:
 14 Q. Mr. Lease, before the break, before
 15 lunch, we were discussing you recall
 16 environmental contamination issues, notice, the
 17 three types of notice and environmental
 18 contamination issues, do you recall that?
 19 A. Yes.
 20 Q. We spent the morning talking about
 21 compliance issues, there is this issue of the 10
 22 percent with the chart now we are on to
 23 contamination.
 24 Do you recall we were also talking
 25 about the Torrance facility and Consent

Page 1308

1 JOHN LEASE - CROSS
 2 Agreement at the Torrance facility right before
 3 lunch?
 4 A. Yes.
 5 Q. You have sent to Fairchild, since
 6 the execution of that Consent Agreement a number
 7 of claims for indemnity; correct for Torrance?
 8 A. Subsequent to?
 9 Q. Yes.
 10 A. I have to check and see the record.
 11 Q. Let's quickly go through them,
 12 hopefully quickly.
 13 If you look in the binder I
 14 provided to you, correspondence binder which
 15 hopefully is still up there, do you have it?
 16 A. In the Torrance section?
 17 Q. Yes. In the Torrance section there
 18 is the little label that says Torrance. If you
 19 move forward we had paused on the Consent
 20 Agreement which was a letter dated March, I
 21 believe it was 2nd. Which is also in Mr.
 22 Chesler's binder, at I believe tab 34 I think it
 23 will be, yes 34. Do you recall that, sir?
 24 A. Looking at the March 2 letter?
 25 Q. Yes. I want to look at it in the

Page 1309

1 JOHN LEASE - CROSS
 2 correspondence binder I gave you because we will
 3 look at some subsequent.
 4 A. Okay, I have that letter.
 5 MR. CHESLER: Sorry, what is the
 6 date?
 7 MR. ZUROFSKY: March 2 was the
 8 date of the letter we were looking at right
 9 before lunch.
 10 THE ARBITRATOR: March 2006.
 11 Q. March 2 of 2006. We talked about
 12 that Consent Agreement at length before lunch.
 13 I want to move forward in time to April 12, 2006
 14 letter for Torrance.
 15 A. Okay.
 16 Q. This is a notice letter from you to
 17 Ms. Hall; is that right?
 18 A. Yes.
 19 Q. This is a notice letter in the
 20 third category of notice; right?
 21 A. The third category?
 22 Q. Remember we had three categories of
 23 notice, we talked about first one being notice
 24 of a condition, second one being here is what we
 25 are going to do about it. The third one being

Page 1310

1 JOHN LEASE - CROSS
 2 here is the bill for work already done.
 3 A. I am just reading the attachments
 4 here to see what I said what the attachment was.
 5 There is a payment to DTSC referenced here.
 6 Q. Right. You are saying those
 7 payments are in your view indemnifiable; right?
 8 A. That's correct.
 9 Q. Same thing with the next letter in
 10 the binder; right? You're saying these are being
 11 done, these payments are being done pursuant to
 12 the Consent Agreement as well? Take the first
 13 question first.
 14 A. Which letter are we on now?
 15 Q. Sorry, June 5, 2006.
 16 A. Okay. The scope of work?
 17 Q. Yes.
 18 A. Okay.
 19 Q. This was something sent, was it
 20 not, to the Department of Toxic Substances
 21 before it was sent to Fairchild? The scope of
 22 work was prepared?
 23 A. It looks like the scope of work
 24 went to DTSC in May. My letter of June 5th.
 25 Q. Right. You're saying that you're

70 (Pages 1307 to 1310)

Page 1311

1 JOHN LEASE - CROSS
 2 claiming to Ms. Hall the costs of that, the
 3 scope of work that you say was done pursuant to
 4 the Consent Agreement are reimbursable in your
 5 June 5 letter; right?
 6 A. That's correct.
 7 Q. Next is June 23rd. I realize this
 8 one is unsigned in the book.
 9 A. Yes.
 10 Q. Do you recall sending a letter to
 11 Ms. Hall around June, on or about June 23, 2006
 12 in sum and substance reflected here, I believe
 13 it is perhaps the signed one may be a version --
 14 no, the one in Mr. Chesler's book is also
 15 unsigned. So perhaps the signed one is not
 16 about.
 17 A. This is the transmittal letter.
 18 Q. Again, is this something you are
 19 claiming the costs of which are reimbursable
 20 because of the -- as a result of the Consent
 21 Agreement?
 22 A. Yes. We make that notification.
 23 Q. Next one as well, July 31, 2006.
 24 Same issue?
 25 A. Yes.

Page 1312

1 JOHN LEASE - CROSS
 2 Q. Then there is only one more. Let
 3 me just close this out. October 17, 2006, same
 4 question.
 5 A. Okay.
 6 Q. Yes, agree? You're sending this
 7 letter to Ms. Hall saying you owe us these costs
 8 because we took them pursuant to the Consent
 9 Agreement; is that correct?
 10 A. That's correct.
 11 Q. Let's switch to the Kelkheim
 12 facility. I want to move to Europe for a
 13 minute, exciting. Do you see the Kelkheim
 14 letters?
 15 A. No. Not yet.
 16 Q. Under tab of Kelkheim.
 17 MR. CHESLER: There is no Kelkheim
 18 tab.
 19 MR. ZUROFSKY: I have a Kelkheim.
 20 It is the second to the last one in European
 21 dated February 20, 2006.
 22 MR. CHESLER: I have it now.
 23 Q. FC 003882. What is going on here,
 24 are you providing a report for work that had
 25 board been done at the Kelkheim facility to

Page 1313

1 JOHN LEASE - CROSS
 2 Ms. Hall?
 3 A. Okay. I see that.
 4 Q. Yes. Is that what's going on in
 5 this letter you're providing Ms. Hall reports
 6 for work that had already been done and
 7 demanding payment for those, that work?
 8 A. There is a proposal in here. I am
 9 not sure exactly if that was work that had been
 10 done at this point. It was still in progress.
 11 And the second document is a letter.
 12 Q. A letter to?
 13 A. To appears to be an environmental
 14 representative from Wiesbaden for De
 15 Recordation.
 16 Q. The regulator?
 17 A. I am not sure if he is a regulator.
 18 Q. Had Alcoa contacted the regulators
 19 in Germany regarding the Kelkheim facility and
 20 undertaken investigative work by the time of
 21 this letter?
 22 I'll ask it both ways. Had Alcoa
 23 contacted regulators in Germany on this facility
 24 prior to the date of this letter?
 25 A. I don't know.

Page 1314

1 JOHN LEASE - CROSS
 2 Q. Look at the second paragraph you
 3 say "As a result of these studies the
 4 authorities agreed in May 2005," does that
 5 refresh your recollection that Alcoa had
 6 discussions with these authorities on these
 7 investigations?
 8 A. Yes.
 9 Q. It was as a result of these studies
 10 so Alcoa performed studies at Kelkheim prior to
 11 contacting or prior to having discussions with
 12 the regulators?
 13 A. It doesn't say that.
 14 Q. I am asking if it refreshes your
 15 recollection as to whether or not you performed
 16 the studies before you spoke to the regulators?
 17 A. I wasn't involved in the study, so
 18 I am not sure what the sequence here. I can't
 19 comment.
 20 Q. We will move on. Let's talk about
 21 Hildesheim. Did Alcoa performed work
 22 investigative work at Hildesheim following the
 23 Phase IIs?
 24 A. I would need to refresh my memory.
 25 Q. Let's look at tab 38 in Mr.

71 (Pages 1311 to 1314)

Page 1315

1 JOHN LEASE - CROSS
 2 Chesler's binder. The very last page.
 3 A. Hildesheim.
 4 Q. Yes.
 5 A. I see one project listed.
 6 Q. Which one? 210, is that the one?
 7 A. I see confirmatory groundwater
 8 sampling.
 9 Q. Right. That one; right? Does that
 10 refresh your recollection that Alcoa performed,
 11 it says confirmatory groundwater investigation,
 12 Alcoa performed investigations at Hildesheim?
 13 A. That would refresh my recollection
 14 they did a project there.
 15 Q. Do you recall at any point ever
 16 telling Fairchild about that prior to this
 17 arbitration? I should say prior to the provision
 18 of these types of charts, the first one dates
 19 actually prior to this arbitration.
 20 A. Prior notice for this?
 21 Q. Yes.
 22 A. Would have been in the Phase II
 23 report.
 24 Q. That is all you recall about that?
 25 A. I haven't looked back at the

Page 1316

1 JOHN LEASE - CROSS
 2 correspondence file to see if there is a letter
 3 for this.
 4 Q. Are you aware of any correspondence
 5 or communications? The documents are there, but
 6 are you aware outside of --
 7 A. I would have to check the records.
 8 Q. Mr. Lease, in preparing documents,
 9 in connection with ERM's Phase IIs did Alcoa
 10 participate in the editing, did it provide
 11 comments and edit those documents before they
 12 were sent to Fairchild?
 13 A. I believe there were technical
 14 reviews conducted.
 15 Q. Were you involved in that?
 16 A. To some degree. Not so much on the
 17 technical aspect. Just on readability. Form.
 18 THE ARBITRATOR: Which reports are
 19 these that you're referring?
 20 MR. ZUROFSKY: The Phase IIs
 21 before they were sent to Fairchild.
 22 Q. Here is document 170 previously
 23 introduced at depositions, I believe. The top
 24 email is from you; right, Mr. Lease?
 25 A. Yes, it is.

Page 1317

1 JOHN LEASE - CROSS
 2 Q. The subject line is French law for
 3 reporting and remediation. Do you see that
 4 there?
 5 A. Yes.
 6 Q. We have had some discussion over
 7 the first few days of this hearing, have we not,
 8 about that section in ERM's report that deals
 9 with French reporting requirements, do you know
 10 which one I'm talking about?
 11 A. French reporting?
 12 Q. Yes. In the Phase IIs there is a
 13 discussion of French reporting; right?
 14 A. I believe there is, yes.
 15 Q. You have heard testimony about that
 16 at this hearing a couple different times?
 17 A. Yes.
 18 Q. Is that the section, as you
 19 understand it, in July of 2003 that is being
 20 addressed in this email?
 21 A. Yes.
 22 Q. So, I'd like to with that
 23 background, look at the top email in the email
 24 from you. If you look down four paragraphs,
 25 beginning "At any rate." Do you see that there?

Page 1318

1 JOHN LEASE - CROSS
 2 A. In parentheses?
 3 Q. No. Sorry the one before. "At any
 4 rate."
 5 A. Okay.
 6 Q. I want to go down -- you say "At
 7 any rate, we still need French legal review of
 8 these sections before we go to final with the
 9 reports." DO you see that?
 10 A. Yes.
 11 Q. The distribution group on this
 12 email is only internal Alcoa people; right, this
 13 is not many could meant back to ERM?
 14 A. I don't see anybody from ERM on
 15 this list.
 16 Q. If you look down seven lines in
 17 that paragraph beginning "As we go."
 18 A. Yes.
 19 Q. "As we go through this exercise,
 20 let's keep in mind that reimbursement from the
 21 escrow fund remedial work under the sales
 22 agreement is tied to regulatory drivers and/or
 23 risk assessment." Do you see that?
 24 A. Yes.
 25 Q. When you were making comments on

72 (Pages 1315 to 1318)

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Page 1319

JOHN LEASE - CROSS

ERM -- when Alcoa was making comments on ERM's Phase II reports was one of the things they had in mind comments that would most likely satisfy the requirements of the agreement for indemnification?

A. My comments here were really to ensure we were clear from a legal standpoint as to how the French law was read. And in fact said.

It wasn't intended to dictate how the technical portion of the report should be phrased to meet any condition that we felt at the escrow fund. My intent to try to get clear language in the Phase IIs with French review, or counsel review to make sure we understood what the guidelines were in France.

Q. Just so we're clear, this is prior to the time when you submitted those reports to Fairchild, the Phase II reports?

A. Yes. This would have been before then.

Q. You are now taking the position that those Phase II reports provided financial with notice of the subsequent investigations

Page 1321

JOHN LEASE - CROSS

Q. This section does not say or anywhere in the Phase II, do you know if it says that Alcoa will in fact be reporting to the regulatory authorities the findings of the Phase II?

A. Pardon?

Q. Are you aware of any part of the Phase II report in which Alcoa or ERM says that Alcoa will in fact be reporting the findings of that investigation to the regulators?

A. In any Phase II report or this Phase II?

Q. Any.

A. I really haven't read these in any detail. Pretty much from the point that the contract ended with ERM, as far as the Phase II studies were concerned, I didn't get involved in the technical aspects of the reports.

Q. All I am asking, sir, are you aware in any of the Phase IIs whether or not it contains a statement that says something to the effect of Alcoa will be reporting, not that it is good practice, but it will be reporting the results to regulators?

Page 1320

JOHN LEASE - CROSS

that Alcoa was going to take?

A. Yes.

Q. Let's look at the French facilities. I believe Mr. Chesler's binder contains some documents related to the Montbrison facility. It is on tab 26. I think the first one.

A. Which tab?

Q. Let's do the Phase II. Tab 25, page 25.

A. Okay.

Q. You have seen this reporting section of this document before; right?

A. The Phase II report?

Q. Yes.

A. Yes, we reviewed it in part yesterday.

Q. It talks about it being generally understood as good management practice to communicate relevant information to the regulatory authorities, do you recall that?

A. In this report?

Q. Yes.

A. I don't recall specifics in here.

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JOHN LEASE - CROSS

A. I don't know.

Q. Turn to tab 26, please. February 25, 2005 letter to Ernesto Beckford. Right?

A. Yes.

Q. At this point in time of this letter had Alcoa contacted the French DRIRE and provided results of investigations to the DRIRE?

A. Yes. There appears to be a letter from Alcoa to the DRIRE. It is referenced in the letter.

Q. Let's turn to 27.

A. Okay. I'm there.

Q. Is this again here you're reflecting some attachments. If you look at the first two the first one says a note from the DRIRE inspector. Do you see that?

A. Yes.

Q. Then the second one says a response to the DRIRE inspector dated May 22?

A. Response to the DRIRE inspector, yes.

Q. Had Alcoa provided the note from the DRIRE inspector to Fairchild before it responded to the DRIRE inspector, do you know?

73 (Pages 1319 to 1322)

Page 1323

1 JOHN LEASE - CROSS
 2 A. We provided Fairchild with the
 3 letter to the authorities which would have been
 4 the DRIRE. This letter I provided the note from
 5 the inspector back to Alcoa and our response to
 6 his letter. Response to his comments.
 7 Q. So, in fact Alcoa had responded to
 8 the DRIRE's comments before sending those
 9 comments to Fairchild?
 10 A. Yes.
 11 Q. I want to come back state side and
 12 talk about Fullerton a little bit. At the time
 13 following the Phase IIs as we just saw with Dr.
 14 Powell, Alcoa was aware, as was Fairchild, that
 15 there had been an approval for a plan for a soil
 16 vapor extraction system at the Fullerton
 17 facility?
 18 MR. CHESLER: Your Honor, I
 19 object. That is not what the testimony was. We
 20 just heard the expert talk about, he asked the
 21 same question before, wasn't this an approval of
 22 the plan. The expert testified clearly it
 23 wasn't.
 24 MR. ZUROFSKY: I think he said it
 25 was conditioned on the pilot testing, he said

Page 1325

1 JOHN LEASE - CROSS
 2 A. Okay.
 3 Q. Is this notifying Fairchild here
 4 that an investigation had taken place at the
 5 Fullerton facility prior to this date?
 6 A. Yes.
 7 Q. That is an investigation that was
 8 after this Phase II investigation?
 9 A. Yes, this would have been after.
 10 Q. Let's move forward in time to the
 11 next correspondence. Actually two forward,
 12 excuse me. So it is a letter dated April 8th.
 13 Then I want to go one more past that. The May
 14 9th. Do you see that, Mr. Lease?
 15 A. May 9?
 16 Q. May 9, 2005.
 17 MR. CHESLER: I don't have a May 9
 18 in mine. Mine goes to February 15.
 19 MR. ZUROFSKY: You don't have that
 20 letter?
 21 MR. CHESLER: It is not in my
 22 book.
 23 THE ARBITRATOR: There is April 8
 24 and February 8th.
 25 Q. Moving forward from April 8 --

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1 JOHN LEASE - CROSS
 2 conditional approved.
 3 MR. CHESLER: Conditioned upon the
 4 pilot testing, you just put that in because I
 5 objected to your question.
 6 THE ARBITRATOR: He used the word
 7 conditional approval.
 8 Q. You understood at the time there
 9 was conditional approval of a SVE system at the
 10 Fullerton facility?
 11 A. Personally I didn't.
 12 Q. Now Fullerton is another facility
 13 where following the Phase IIs Alcoa conducted
 14 further investigations; right?
 15 A. I believe that's true.
 16 Q. If you look under the Fullerton tab
 17 of the binder I gave you --
 18 A. Your binder?
 19 Q. Yes, sir.
 20 A. Okay.
 21 Q. I want to move forward in time
 22 chronologically. To January 25th, 2005. We
 23 looked at this letter in connection with
 24 Torrance but it also applies to the Fullerton
 25 facility?

Page 1326

1 JOHN LEASE - CROSS
 2 THE ARBITRATOR: May 15.
 3 Q. We will get the May 9 letter and
 4 come back to it. We can do it off of May 15.
 5 Do you see the May 15 letter there, sir?
 6 A. Yes.
 7 Q. This is a letter from Ms. Hall to
 8 you; right?
 9 A. Yes.
 10 Q. She says there "we received your
 11 letters of April 5 and April 8, 2005 regarding
 12 Alcoa Fastening systems plant 1 located at 800
 13 South State College Boulevard, Fullerton." Do
 14 you see that?
 15 A. Yes.
 16 Q. She is talking about investigations
 17 you sent to her on April 5 and April 8; yes?
 18 A. Yes.
 19 Q. My binder is also a little messed
 20 up. I am looking for a letter June 9, 2005. I
 21 apologize this is all out of order. It should
 22 be one before or one after it, it is a letter
 23 from Ms. Hall June 9, 2005.
 24 MR. CHESLER: I don't have that.
 25 A. Not in here.

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1 JOHN LEASE - CROSS

2 Q. That is the one we will get to, a
3 copy. My apologies for that. We can talk about
4 another topic while we're getting that.

5 Let's go forward to the section of
6 multiple sites at the back, sir.

7 A. Okay.

8 Q. Do you see that first letter that
9 you sent to Mr. Hodge on April 30, 2003,
10 hopefully it is there?

11 A. April 30, 2003.

12 Q. Yes. Do you see that?

13 A. Got it.

14 Q. Do you know what this relates to?

15 A. Pardon?

16 Q. Do you know what this relates to?

17 A. Yes, it is just reading this, this
18 involved the notice that came to Alcoa to the
19 Fullerton plant regarding an offsite disposal
20 area. It involved Kaynar Technologies, which
21 is, I guess the company that owned the Fullerton
22 plant before Fairchild.

23 Q. Do you recall that Fairchild
24 accepted responsibility of this notice, right,
25 of the liabilities associated with this notice?

Page 1328

1 JOHN LEASE - CROSS

2 A. I think all offsite claims were
3 carved out of the agreement. They agreed to
4 take responsibility.

5 Q. At the Fullerton site itself was
6 the Fullerton site named in a lawsuit by the
7 Orange County water commission at some point?

8 A. I seem to recall that, yes.

9 Q. Did you provide a copy of that
10 Complaint to Fairchild when it was named?

11 A. I think that correspondence was
12 between Sandy Harvey and Fairchild.

13 Q. Do you know if Fairchild accepted
14 the cost and claims related to that lawsuit,
15 accepted responsibility for them?

16 A. I don't know. I mean I think that
17 correspondence has been primarily between
18 lawyers.

19 Q. We will get a document and try to
20 refresh your recollection on that.

21 Now, Mr. Chesler, when he spoke to
22 you yesterday asked you about a number of
23 documents. I want to work my way through a few
24 of them. Turn to tab in his binder tab 1 and 2.

25 A. Okay.

Page 1329

1 JOHN LEASE - CROSS

2 Q. He is talking about a meeting you
3 had with Mr. Hodge, do you recall that
4 discussion?

5 A. I recall the meeting, yes.

6 Q. That meeting postdated the signing
7 of the acquisition, of the deal; right?

8 A. Yes.

9 Q. What is that?

10 A. Signing of the agreement.

11 Q. Signing of the agreement.

12 A. In July.

13 Q. Yes.

14 A. Yes.

15 Q. It postdated the signing of the
16 agreement?

17 A. Yes.

18 Q. You were not involved in
19 negotiating the terms of the agreement?

20 A. No.

21 Q. Moving forward to tab 4.

22 A. Okay.

23 Q. Number 1, when you talk about we
24 met with Mike Hodge?

25 A. Yes.

Page 1330

1 JOHN LEASE - CROSS

2 Q. It says there "We met with Mike
3 Hodge on Friday to review Phase II scope of work
4 for 14 Fairchild plants." Do you see that?

5 A. Yes.

6 Q. That is the meeting on November 8
7 in Pittsburgh that has been talked about so far?

8 A. Yes.

9 Q. We briefly reviewed our approach to
10 the Phase II work at Fullerton. Was the discuss
11 brief at that meeting, Mr. Lease?

12 A. Did we discuss what?

13 Q. It says here "We briefly reviewed
14 our approach to the Phase II work at Fullerton.
15 And more generally." Do you see that?

16 A. Yes.

17 Q. Do you recall that discussion about
18 the Phase II work being brief at that meeting?

19 A. I believe that is generally
20 accurate.

21 Q. You went on to say "And more
22 generally, Alcoa's approach to remediation
23 investigation and remedial action." Do you see
24 that?

25 A. Yes.

75 (Pages 1327 to 1330)

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Page 1331

1 JOHN LEASE - CROSS

2 Q. Those are two separate things,
3 remediation investigation and remedial action?

4 A. As I understood it, yes.

5 Q. Moving forward, Mr. Chesler spent a
6 lot of time with you talking about St. Cosme and
7 the waste water issue at St. Cosme; right?

8 A. Yes.

9 Q. How did you learn about this issue
10 of reporting at St. Cosme, this waste water
11 facility?

12 A. Reporting what?

13 Q. You remember the discussion about
14 waste water reporting at St. Cosme?

15 A. Yes.

16 Q. Did you indicate yesterday, I think
17 you did, that you learned about it via
18 Ms. Tabary?

19 A. Yes.

20 Q. Who is Ms. Tabary?

21 A. Ms. Tabary was the environmental
22 manager and plating line superintendent.23 Q. And she worked at the facility from
24 when to when?

25 A. I don't know.

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1 JOHN LEASE - CROSS

2 Q. Do you know if she was still at the
3 facility after the time of this, of the
4 acquisition?5 A. After the acquisition, yes, she
6 was.

7 Q. For how long?

8 A. I don't recall.

9 Q. Did Alcoa fire her when it found
10 out that she had been reporting wrong numbers if
11 you will to the regulators?12 A. I don't know. The matter was
13 turned over to the compliance group and legal
14 group. They took it from there.15 Q. Do you know if Alcoa has faced any
16 disciplinary action by the regulators or any
17 investigation regarding that issue?

18 A. I don't know.

19 Q. You don't know?

20 A. No, I don't.

21 Q. Did you know that at the time of
22 the acquisition Fairchild, I think you testified
23 about this earlier, had already indicated it was
24 intending to replace that system?

25 A. What system?

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1 JOHN LEASE - CROSS

2 Q. Waste water treatment system.

3 A. I believe they had mentioned it in
4 their permit application.5 Q. You told me, I think this morning,
6 that you thought Mr. Miller knew all about that
7 because it was something that was being planned
8 before the acquisition; right?9 A. Because they had prepared an
10 estimate in 2001 for a new waste water plant.11 Q. Has Alcoa been fined at all by
12 virtue of this supposed practice?

13 A. I don't know.

14 THE ARBITRATOR: As a result of
15 what practice?16 MR. ZUROFSKY: The practice what
17 they were talking about yesterday, the reporting
18 practice at the St. Cosme waste water.19 Q. What was the reaction of the
20 regulator when Alcoa informed the regulator
21 about this issue?22 A. I wasn't involved in the
23 discussions with the regulator. As I mentioned,
24 the compliance group and legal group took the
25 lead after this closed.

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1 JOHN LEASE - CROSS

2 Q. I'm going to introduce a document,
3 433. I will write it on so we all have it.
4 (Arbitration Exhibit 433
5 was marked.)6 Q. The top email is from Jeffrey
7 Shockey. Who is Jeffrey Shockey?8 A. At this time Jeffrey Shockey was
9 the safety manager in the services group that
10 I'm in.11 Q. He is reporting to you, Ken Ford
12 and Ken Meholic here?

13 A. Yes.

14 Q. Did I hand you a memo from Jeffrey
15 Shockey?16 THE ARBITRATOR: It is from
17 Jeffrey Shockey October 1, 2003. It is a series
18 of emails.19 MR. ZUROFSKY: It seems the lunch
20 time recess has discombobulated our document
21 system.22 Q. I will ask you to put that to the
23 side. I will return to the issue I wanted to
24 talk about at Fullerton. This will be 434.

25 MR. CHESLER: Are we putting this

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Page 1335

1 JOHN LEASE - CROSS
 2 one aside?
 3 MR. ZUROFSKY: Yes.
 4 (Arbitration Exhibit 434
 5 was marked.)
 6 THE ARBITRATOR: Are we coming
 7 back to this one?
 8 MR. ZUROFSKY: We will, your
 9 Honor. I apologize for that.
 10 Q. This letter is the June 9 letter I
 11 was referring to earlier regarding Fullerton.
 12 Mr. Lease, does this refresh your recollection
 13 that Fairchild accepted responsibility for the
 14 defending Alcoa and Fairchild in connection with
 15 the lawsuit filed against Fullerton?
 16 A. I will take a short read here if
 17 you don't mind.
 18 Well, I am not sure. I am not a
 19 lawyer, so I am not quite sure what the last
 20 paragraph means. "Conditionally prepared to
 21 undertake the defense of the lawsuit." I am not
 22 sure what the conditions were.
 23 Q. It says here the condition is that
 24 the sites are in fact former Fairchild Fasteners
 25 facilities. Do you see that there?

Page 1336

1 JOHN LEASE - CROSS
 2 A. Okay.
 3 Q. You referenced earlier some
 4 correspondence between Ms. Hall and Mr. Harvey;
 5 right?
 6 A. Yes.
 7 Q. This is a letter addressed to you?
 8 A. Yes.
 9 Q. Does this refresh your recollection
 10 that since this time Fairchild has in fact
 11 defended this lawsuit for Alcoa and Fairchild?
 12 A. What do you mean defended? They
 13 will undertake defense, I guess.
 14 Q. Have they?
 15 A. I don't know.
 16 Q. You testified yesterday, did you
 17 not, facility has not accepted one claim that
 18 you have submitted to it; right?
 19 MR. CHESLER: Your Honor, he
 20 testified about indemnification claims pursuant
 21 to 11.6. As counsel well knows, this is
 22 governed by an entirely different section of the
 23 agreement, had nothing to do with the prior
 24 testimony. It is called third-party claims. It
 25 is in a different section of the agreement.

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1 JOHN LEASE - CROSS
 2 Q. Did Fairchild accept this claim?
 3 A. Did they accept?
 4 Q. This liability here.
 5 A. They accepted what they accepted in
 6 the letter.
 7 Q. Now I want to go back to St. Cosme.
 8 This will be 435.
 9 (Arbitration Exhibit 435
 10 was marked.)
 11 Q. This is the memo at St. Cosme.
 12 Have you seen this document before, Mr. Lease.
 13 A. No, I don't recall seeing this.
 14 Q. Let's turn to page FAIR 91345. I
 15 want to see if this refreshes your recollection
 16 about the matter. Under the heading Waste Water
 17 Treatment Plant. "The site has explained that
 18 historically some waste water discharge values
 19 given to the authorities were wrong because of
 20 inadequate monitoring methodology." Do you see
 21 that?
 22 A. Yes.
 23 Q. Do you understand it to be a report
 24 as to what the site told the St. Cosme
 25 regulator? Do you understand that to be a

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1 JOHN LEASE - CROSS
 2 report?
 3 MR. CHESLER: Your Honor, again, I
 4 don't want to be --
 5 MR. ZUROFSKY: I'm asking.
 6 MR. CHESLER: How can the witness
 7 testify as a matter of foundation this is a
 8 report to regulators? He just said he's never
 9 seen the document before.
 10 MR. ZUROFSKY: I am asking if it
 11 refreshes his recollection as to what Alcoa
 12 reported to the regulators. You spent whole
 13 time talking about Alcoa reported to the
 14 regulators.
 15 THE ARBITRATOR: If he knows.
 16 MR. ZUROFSKY: Right. If he knows.
 17 MR. CHESLER: Can we take, your
 18 Honor, this is, I know this is not an evidence
 19 class, may I just read for your Honor the
 20 question to which I just objected, please.
 21 "Question: Do you understand it to
 22 be a report as to what the site told the St.
 23 Cosme regulator? Do you understand that to be
 24 the report?"
 25 That doesn't remotely relate to

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1 JOHN LEASE - CROSS
 2 refreshing his recollection, he is trying to
 3 testify about something for which this witness
 4 has absolutely no foundation.
 5 THE ARBITRATOR: Well, if
 6 understand that he can answer the question.
 7 You're not objecting to these documents, all
 8 these documents are coming in without
 9 authenticity.
 10 MR. CHESLER: No, your Honor,
 11 remember, the rule was the document was presumed
 12 to be admissible unless we stood up and
 13 objected. I am absolutely objecting. I don't
 14 know what this document is.
 15 MR. ZUROFSKY: We said -- we are
 16 not talking admissibility. This is a document
 17 you produced.
 18 MR. CHESLER: Excuse me. If we go
 19 back again to look at the record what we said at
 20 the beginning of this hearing we said all
 21 documents will presume to be admissible, if a
 22 party had an objection they should rise and make
 23 the objection.
 24 THE ARBITRATOR: Any objection as
 25 to authenticity?

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1 JOHN LEASE - CROSS
 2 MR. CHESLER: I have no idea what
 3 the document is. I am making objection not to
 4 authenticity because I don't know what it is, I
 5 am making objection to admitting this document
 6 without foundation through a witness who said he
 7 has no idea what it is, where counsel is making
 8 representations in a question about reports to
 9 regulators.
 10 MR. ZUROFSKY: You produced this
 11 document.
 12 THE ARBITRATOR: Just a minute,
 13 please. Where did this document come from?
 14 MR. ZUROFSKY: Their files. That
 15 is what the FAIR number means at the bottom
 16 right.
 17 MR. CHESLER: Okay. Along with
 18 thousands and thousands of other pages. I am
 19 objecting to the admissibility of this document.
 20 THE ARBITRATOR: Do you want
 21 somebody to come in and identify this particular
 22 document?
 23 MR. CHESLER: If counsel is going
 24 to make representations about what it is, it was
 25 submission to regulators or representations to

Page 1341

1 JOHN LEASE - CROSS
 2 regulators I am. I have no idea if it is.
 3 THE ARBITRATOR: It appears to be
 4 memorandum of a meeting that was held in the
 5 facility after your company assumed ownership of
 6 it. It was produced from your files. I suppose
 7 it is admissible for whatever it says. If it is
 8 authentic. You are not questioning its
 9 authenticity.
 10 MR. ZUROFSKY: Are you?
 11 MR. CHESLER: I am not questioning
 12 the fact it was apparently produced from my
 13 client's files. It has a Bates number on it.
 14 THE ARBITRATOR: It is probably
 15 not appropriate to ask this witness very much
 16 about it. You can always take a dictionary
 17 definition of something and ask the witness if
 18 he agrees with it.
 19 MR. CHESLER: Yes. That was not
 20 the question to which I rose to object.
 21 MR. ZUROFSKY: I will make that
 22 question. You now objected to this document.
 23 You changed your objection. The question on the
 24 table are you objecting to admissibility of this
 25 document?

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1 JOHN LEASE - CROSS
 2 MR. CHESLER: Yes.
 3 MR. ZUROFSKY: I will ask you to
 4 produce any of the following people who are
 5 listed as participants here so they can
 6 authenticate it --
 7 MR. CHESLER: It says a DRIRE
 8 division manager, DRIRE inspector and several
 9 people --
 10 MR. ZUROFSKY: Including
 11 Ms. Tabary who you identified as the person who
 12 made the report in the first place about
 13 discrepancies in the waste water treatment
 14 plant.
 15 MR. CHESLER: He just asked the
 16 witness if she works for us anymore, apparently
 17 she doesn't.
 18 THE ARBITRATOR: I was unclear on
 19 that. She worked for you after you assumed
 20 ownership of this facility for some period of
 21 time?
 22 MR. CHESLER: Yes.
 23 THE ARBITRATOR: Whether she was
 24 still there or not, I was not clear.
 25 MR. CHESLER: I have no idea.

78 (Pages 1339 to 1342)

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JOHN LEASE - CROSS

THE ARBITRATOR: Maybe he doesn't know either. I don't know. The problem with this hearing, gentlemen, you have got dozens of volumes of documents that we're not questioning, we are letting documents produced by the parties into evidence without objection.

If we are going to start to object to admissibility of documents, I think we are going to have to lengthen this hearing.

MR. CHESLER: Just so we are clear, I rose because counsel asked a question of this witness which represented in the question that representations were made to regulators concerning a document he had said two minutes before he had never seen that's why I rose to object.

MR. ZUROFSKY: That is not what you're doing now.

THE ARBITRATOR: I will sustain your objection. Do you want to rephrase the question?

MR. ZUROFSKY: I do want to rephrase the question about this document.

THE ARBITRATOR: Go ahead.

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JOHN LEASE - CROSS

Q. Third page FAIR 91345. Waste water treatment plant. Do you see that there?

A. Yes.

Q. It says "The site has explained historically some waste water discharge values given to the authorities were wrong because of inadequate monitoring methodology. They have indicated that since the beginning of 2002 the values are more accurate and show frequent noncompliances in basement water flow and in mass flow of heavy metals. It was indicated two areas of improvements were current Lucent being studied one reduction of effluents at the source, two installation of a new waste water treatment plants. These aspects are described in the application file."

Two bullets, "Did we give them the spreadsheet summary comparing what we reported versus what were the actual values? If so, for what period for what time period? No, we did not give them those spreadsheets."

Second bullet. "It does not sounds like they were that upset? Were they? No they did not seem to be upset but certainly

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JOHN LEASE - CROSS

embarrassed."

Mr. Lease, does reading that refresh your recollection as to how the regulators, about Alcoa's interactions with the regulators regarding waste water treatment plant issues at St. Cosme?

A. I have no recollection about this memo or this topic.

Q. You testified yesterday with Mr. Chesler about a discrepancy in numbers being reported to the authorities at the waste water treatment plant do you recall that?

A. Yes.

Q. This document says here they have indicated, they being the site indicated since beginning of 2002 the values are more accurate.

Sir, when did the acquisition take place between Fairchild and Alcoa?

THE ARBITRATOR: December 2002.

A. December 2002.

Q. You can put that aside. Mr. Chesler asked you yesterday what the DRIRE in France wanted Alcoa to do a detailed risk assessment, do you remember that testimony?

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JOHN LEASE - CROSS

A. No. Can you give me more detail?

Q. He asked you whether or not the DRIRE, you know what the DRIRE is; right?

A. Yes.

Q. Wanted Alcoa to do a detailed risk assessment at Montbrison. Do you recall him asking you that?

A. Yes.

Q. Were you here for the testimony of Mr. George?

A. I was in and out of that testimony, not for the full time.

Q. Do you recall we looked at some documents indicating comments by the DRIRE that they had no objection to Alcoa proceeding voluntarily with the detailed risk assessment?

A. I don't specifically recall that.

Q. I will read you the document we introduced with Mr. George. I will read it to you. It should be there from yesterday, if it is not I guess we can get you another copy. It would be Exhibit 12, if not I can get you another copy. You may have it there. It was up there yesterday with Mr. George. Not in the

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1 JOHN LEASE - CROSS
2 book with Mr. George. It is one we handed up.
3 I can get another copy right here.

4 THE ARBITRATOR: Is he going to be
5 able to add anything to what Mr. George already
6 said about this subject?

7 MR. ZUROFSKY: You're right, your
8 Honor. We will let the document speak for
9 itself. That's fine.

10 THE ARBITRATOR: Mr. George was
11 there and had personal knowledge.

12 MR. ZUROFSKY: Fair enough. Your
13 Honor, I would like to request a short recess to
14 go over that chart with my colleague and see
15 what we want to do about that, if anybody.

16 THE ARBITRATOR: All right.
17 (Recess taken.)

18 MR. ZUROFSKY: Your Honor, we
19 reviewed the chart. There are some items we
20 might have some quibble with. But we are happy
21 to brief those off the chart. There is also
22 some items that Alcoa is claiming for while they
23 technically notice the Phase I, we don't think
24 is technical notice. We will brief those. So
25 with that and all reservations of course I have

1 JOHN LEASE - REDIRECT
2 to what you were going to do about it, as
3 opposed to how much actions would cost, do you
4 recall that subject coming up over and over?

5 A. Yes.

6 Q. I want to take a moment since he
7 asked you all these questions about whether you
8 gave notice of environmental conditions. I to
9 ask you to look at the definition under the
10 agreement you were operating under of Fasteners
11 Environmental Condition. You see it says "Means
12 any" I want you to drop all the way down to
13 capital C as in Charlie?

14 A. Okay.

15 Q. "Any violation or alleged
16 violation or noncompliance or alleged
17 noncompliance with applicable environmental law
18 with respect to the Fasteners business that
19 commenced prior to the Effective Time."

20 Now, you recall that you provided
21 what we previously described as gap analysis
22 summaries to Fairchild for four or five
23 different facilities?

24 A. Yes.

25 Q. Do you recall you testified those

1 JOHN LEASE - REDIRECT
2 nothing further at this time.

3 THE ARBITRATOR: Thank you.

4 RE-DIRECT EXAMINATION BY MR. CHESLER:

5 Q. I want to start asking you about
6 some questions about the Acquisition Agreement
7 related to the topics counsel questioned you
8 about.

9 Mr. Lease, would you turn to page
10 83 there are various copies which have different
11 Bates numbers on them, rather than confuse the
12 record with the Bates number, I am interested in
13 you looking at page 83 of the contract.

14 A. Okay.

15 Q. You see bottom of page 83 there is
16 a section that defines Fasteners Environmental
17 Condition. Do you see that?

18 A. My page 84.

19 Q. Okay. We don't even have
20 consistent pages. Okay. 84. For the record it
21 is section 11.6 E iii. Do you have that?

22 A. Yes.

23 Q. Counsel asked you a number of
24 questions about whether you had given notice of
25 Fasteners Environmental Conditions, as opposed

1 JOHN LEASE - REDIRECT
2 were selected because they were the big ones
3 which had the largest range of problems
4 associated with them?

5 A. Problems as well as operations.

6 Q. Keeping in mind this definition of
7 violation or alleged violation or noncompliance
8 or alleged noncompliance with environmental law
9 with respect to the Fasteners business, did you
10 provide in the gap analysis summaries you gave
11 Fairchild notice of the existence of Fasteners
12 environmental conditions?

13 A. Yes.

14 Q. Did you give such notice with
15 respect to the Fasteners Environmental Condition
16 of machine guarding requirements not being met?

17 A. Yes.

18 Q. Did you give notice of Fasteners
19 Environmental Conditions with respect to fall
20 control requirements not being met?

21 A. Yes.

22 Q. Did you give notice of Fasteners
23 Environmental Condition with respect to noise
24 reduction requirements not being met?

25 A. Yes.

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JOHN LEASE - REDIRECT

Q. Did you give notice of the Fasteners Environmental Condition with respect to lock out tag out requirements not being met?

A. Yes.

Q. Did you give notice of Fasteners Environmental Condition with respect to confined space requirements not being met?

A. Yes.

Q. Did you give notice of Fasteners Environmental Condition with respect to fire prevention requirements not being met?

A. Yes.

Q. Did you give notice of a Fasteners Environmental Condition with respect to electrical safety requirements not being met?

A. Yes.

Q. Did you give take of the Fasteners Environmental Condition notice with respect to mobile equipment requirements not being met?

A. Yes.

Q. For all or many of them were notices with respect to those conditions given in more than one gap analysis summary?

A. Yes.

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JOHN LEASE - REDIRECT

Q. In the gap analysis summaries, all of which or many of which we have been through before -- let me withdraw that and point you to another section in the agreement.

Look at 11.6 C, a few subsections earlier. I don't know what page it is on in your particular draft 11.6 C.

A. Yes.

Q. 11.6 is section entitled Seller Environmental Indemnity. C begins with "prior to the closing." Do you have that?

A. Yes, I do.

Q. I am going to ask you about several different parts of this section. But the first part I want to ask you about is the last sentence. It says "The buyer" that was Alcoa; correct?

A. Correct.

Q. "Shall afford the sellers a reasonable opportunity to comment on the buyer's proposed response to a Fasteners Environmental Condition."

Now, when you provided notice to Fairchild about all of the Fasteners

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JOHN LEASE - REDIRECT

Environmental Conditions we just went through in that list, when you provided that notice in the gap assessment summaries, did you also tell them what your proposed response was with respect to each of those conditions?

A. Yes.

Q. You told them, for example, we are going to go do a study of machine guarding and we will fix whatever machines need guarding didn't you?

A. Yes.

Q. We are going to do study of fall control requirements and fix whatever fall control requirements aren't met; didn't you?

A. Yes.

Q. Etc. down the list; right?

A. Yes.

Q. Did they come back to you at any time and say to you, prior to this proceeding and prior to the time they hired lawyers to litigate over the question, did they say to you -- I am going to withdraw that. Let me hold onto that for a minute.

I said I want to ask you about a

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JOHN LEASE - REDIRECT

few other provisions in 11.6 C. Let me do that before we go to the next topic. If you follow along with me under C it says "Prior to the closing, both sides will designate a representative to receive and consult." You're the representative designated by Alcoa; correct?

A. That's correct.

Q. Apparently you have been through a series of them on the other side. You have been the representative throughout on the Alcoa; is that right?

A. Yes.

Q. It says next sentence "From and after the closing, the buyer, Alcoa will conduct and control all remedial action and negotiations with any government entity in respect of all Fasteners Environmental Conditions subject to this indemnification." Do you see that?

THE ARBITRATOR: What provision are you reading from?

MR. CHESLER: 11.6, C your Honor from the second sentence, C as in Charlie.

THE ARBITRATOR: Thank you.

Q. Do you see that section, Mr. Lease?

81 (Pages 1351 to 1354)

Page 1355

1 JOHN LEASE - REDIRECT
 2 A. Yes.
 3 Q. To the best of your knowledge with
 4 respect to all those government interactions
 5 that counsel asked you about on
 6 cross-examination, did Alcoa conduct and control
 7 those just as the contract said it had a right
 8 to do?
 9 A. Yes, we did.
 10 Q. Does it say anything in here that
 11 the Fairchild Fasteners get to conduct them?
 12 A. That they get to conduct them?
 13 Q. Yes.
 14 A. No, it doesn't.
 15 Q. Does it say they have any control
 16 over them?
 17 A. No.
 18 Q. Does it even say that you consult
 19 with them and talk to them about what you should
 20 or shouldn't do with the government regulators?
 21 A. No, it does not.
 22 Q. If you go further down, staying in
 23 11.6 C, I don't know where on your copy of the
 24 document this appears, I can't tell you how many
 25 lines up from the bottom of the page it is. I

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1 JOHN LEASE - REDIRECT
 2 want you to find the sentence if you can that
 3 reads as follows "The buyer will provide the
 4 sellers' representative and the sellers'
 5 environmental consultants with reasonable access
 6 to the properties of the Fasteners business." I
 7 am going to stop there for a moment.
 8 Do you have that sentence?
 9 A. Yes.
 10 Q. In all the time you've been the
 11 representative of Alcoa under this provision,
 12 since the provision went into effect, have they
 13 ever once at Fairchild asked you to have any
 14 access, reasonable or otherwise, to a single one
 15 of these facilities?
 16 A. No.
 17 Q. Then it says "And," continuing in
 18 the same sentence, "And copies of all
 19 nonprivileged information with respect to the
 20 remedial actions to be taken in respect of such
 21 environmental actions."
 22 This provision about providing them
 23 with copies of information relates directly to
 24 something called remedial actions; right?
 25 A. Yes.

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1 JOHN LEASE - REDIRECT
 2 Q. Stay with me for a moment. I want
 3 you know to find the section 11.6 E little Roman
 4 6, VI.
 5 A. Okay.
 6 Q. That is entitled remedial action.
 7 Do you have that section?
 8 A. Yes.
 9 Q. So this is the subject matter as to
 10 which the provision we were just looking at says
 11 that you're supposed to give them copies of
 12 nonprivileged information with respect to the
 13 remedial actions to be taken in respect of such
 14 environmental actions; right?
 15 A. Right.
 16 Q. This provision we don't have to
 17 read it, but it basically relates to
 18 environmental contamination laws, doesn't it,
 19 CERCLA, talks about cleaning up, removing,
 20 abating hazardous materials, preventing the
 21 release or threat of release or further release
 22 of hazardous materials and performance of
 23 studies and investigations with respect to those
 24 particular subsequent; right?
 25 A. Correct.

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1 JOHN LEASE - REDIRECT
 2 Q. So this provision about giving
 3 materials, this has nothing to do with fixing
 4 machine guarding and noise control. This has to
 5 do with these hazardous materials and particular
 6 environmental clean-up requirements that are
 7 laid out in that remedial action section; right?
 8 A. That is my understanding, yes.
 9 Q. To the best of your knowledge in
 10 the Phase Is that take up half of the top shelf
 11 in the Phase IIs that take up about half the
 12 second shelf, in all that correspondence and
 13 reports that take up the bottom two shelves, did
 14 you give them whatever documents you had that
 15 related to the actions to be taken with respect
 16 to the remedial -- with respect to remedial
 17 actions concerning these particular types of
 18 environmental conditions?
 19 A. I believe we have.
 20 Q. If you go down a couple lines past
 21 that, by the way the next sentence says "The
 22 buyer will select consultants and contractors to
 23 implement such remedial actions who shall be
 24 reasonably acceptable to parent." I will stop
 25 there for a second.

82 (Pages 1355 to 1358)

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JOHN LEASE - REDIRECT

There was some comments about you getting rid of one set of consultants and hiring something called Mission Geoscience; right?

A. Yes. Mission Geoscience.

Q. In all the time since Fairchild has known you hired Mission Geoscience, has anybody ever told you that they were unacceptable to Fairchild?

A. No. All I seen is comments we didn't tell them that we were going to use them. They never said they were not acceptable.

Q. Then it says going on there, "you will provide the sellers' representative and its consultants with copies of all reports, analytical data, correspondence, directives, orders and documents submitted to or received by the buyer from any government entity in connection with the remedial action." Let's stop there.

Does it tell you when you have to give the materials received from or given to a government entity?

A. No.

Q. Just says you have to give it to

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JOHN LEASE - REDIRECT

them; right?

A. Right.

Q. So far as you know did you give them whatever you got from or gave to the government?

A. As far as I know, we did.

Q. So all these questions they asked you about, why didn't you give us the decree, the draft decree before it was signed or the decree the minute it was signed, you gave them whatever government documents you have?

A. Yes.

Q. Then it says "And other nonprivileged documents created or received by or on behalf of the buyer in connection with the remedial action."

Again, that goes back to the things in the bookcase we talked about before; correct?

A. Correct.

Q. Now, they showed you, they said a box full, I looked at it, it wasn't quite a box full. It was a pile of paper about some study done in one of the facilities about machine guarding; right?

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JOHN LEASE - REDIRECT

A. Right.

Q. You didn't know whether that was given to the Fairchild people or not; was that your testimony?

A. My best recollection we did provide that to them.

Q. I want to ask you about machine guarding, they spent a lot of time on that. Before we get to that particular report and what you did and didn't give them, you remember you said in answer to several of counsel's questions when he was asking you about whether you gave them correspondence after particular dates, you kept saying, yeah, but what about the Phase Is we gave them. Remember that?

A. Yes.

Q. I want to show you seven Phase I reports.

MR. CHESLER: Your Honor, these are all in bulk Exhibit A on the top shelf. Each one of them indicates where in Exhibit A they appear.

THE ARBITRATOR: The book you previously had with him, none of those appears?

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JOHN LEASE - REDIRECT

MR. CHESLER: Just excerpts of a few. These are the actual Phase Is. I will hand your Honor a set. I don't want to load you up unnecessarily with paper. Obviously you can keep them if you like. I don't want to burden you with more than you need.

Q. Now, counsel asked you a lot of questions about machine guarding at Fullerton and a few other locations, what you did and didn't tell or did or didn't give Fairchild.

By the way, before I get to the Phase Is, one preliminary question, at one point you said something like mentioning machine guarding in a single gap letter constituted notice with respect to all of the facilities. Do you remember generally saying something like that?

A. Yes.

Q. In fact with respect to machine guarding, did your notice of the Fasteners Environmental Condition of machine guarding requirements not being complied with, did that go to them in one gap summary notice letter and only in one?

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Page 1363

1 JOHN LEASE - REDIRECT
 2 A. No. I don't recall the total
 3 number. But I know it was an issue at all the
 4 facilities that we visited and reported on.
 5 Q. What I want you to do, let's start
 6 with Fullerton. That should be the first one in
 7 your pile. This is Exhibit A, volume 3.
 8 A. Okay.
 9 Q. That is where it appears. I want
 10 you to look at page 52. Again, that is the
 11 original printed page 52 not Bates number page.
 12 A. Okay.
 13 Q. Do you have that?
 14 A. Yes.
 15 Q. You see under occupational safety,
 16 in the Phase I for Fullerton it is reported the
 17 plant received two citation and notification of
 18 penalties in October of '01?
 19 A. Yes.
 20 Q. It goes on to say, I am looking at
 21 the third paragraph under occupational safety,
 22 "second citation was related to machine guarding
 23 for seven punch presses etc.," it goes on they
 24 were ordered to comply, they had to pay a fine.
 25 Do you see all that?

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1 JOHN LEASE - REDIRECT
 2 A. Yes.
 3 Q. Now let's go to the recommendations
 4 in the back, page 71. Page 71 under Compliance
 5 Issues, second paragraph, last sentence says "It
 6 is recommended that the facility ensure that all
 7 machinery -- "
 8 THE ARBITRATOR: What page are you
 9 on?
 10 MR. CHESLER: Sorry, page 71, your
 11 Honor. That is the original printed page 71.
 12 Under Compliance Issues. This is the Phase I
 13 report for Fullerton, California.
 14 Q. It says "It is recommended that the
 15 facility ensure that all machinery be equipped
 16 with proper guarding."
 17 This report was sent to Fairchild
 18 well before the deal ever closed; wasn't it?
 19 A. Yes.
 20 Q. Now let's look at Stoughton,
 21 Massachusetts.
 22 A. Okay.
 23 Q. I want you to look at page 32.
 24 This is, this comes from bulk Exhibit A, volume
 25 5. Printed page 32.

Page 1365

1 JOHN LEASE - REDIRECT
 2 A. Okay.
 3 Q. This is from the conclusions and
 4 recommendations in the Phase I report. And
 5 under compliance issues, last paragraph on
 6 page 32. It informs you and ultimately
 7 Fairchild that ERM observed some of the
 8 machines --
 9 THE ARBITRATOR: Hold on a minute.
 10 I will get to page 32. There are several page
 11 32s in here. I have it. Thank you.
 12 MR. CHESLER: Okay. Bottom of the
 13 page, your Honor, last paragraph.
 14 Q. "ERM observed some of the machines
 15 are outfitted with what appears to be adequate
 16 guarding protection, however many of the
 17 machines do not have adequate machine guarding"
 18 then it cites to a section of the federal
 19 regulations, CFR. Do you see that?
 20 A. Yes.
 21 Q. "It is recommended the facility
 22 undertake a survey of machine guards and ensure
 23 that all machinery meet minimum manufacturer
 24 guarding requirements." Correct?
 25 A. Correct.

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1 JOHN LEASE - REDIRECT
 2 Q. Let's look at St. Cosme, volume 15
 3 from bulk Exhibit A. In particular, I want you
 4 to turn to printed page 37.
 5 A. Okay.
 6 Q. Printed page 37, St. Cosme, Phase
 7 I. Third full paragraph on the page. Says "70
 8 percent, according to the information provided
 9 70 percent of all the machinery on site complies
 10 with French National machinery safety
 11 requirements, safety analysis were performed by
 12 trained employees. ERM observed a number of
 13 machinery which are suspected not to be in full
 14 compliance with the machine guarding
 15 requirements. It is recommended that a full
 16 inspection of all the machines be conducted by
 17 an external qualified organization."
 18 That is what you passed on to
 19 Fairchild before the -- or it was passed on by
 20 Alcoa before the closing; correct?
 21 A. Correct.
 22 Q. Now let's look at Montbrison, which
 23 is in volume 11.
 24 THE ARBITRATOR: The next one I
 25 have is Roques. Whatever order you want to take

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1 JOHN LEASE - REDIRECT
2 them. That is the order you gave them to me.
3 You want to do Montbrison.

4 MR. CHESLER: Montbrison. Your
5 Honor. Let's do Roques. I didn't have it in my
6 pile. I apologize.

7 THE ARBITRATOR: This is also
8 known as Toulouse?

9 MR. CHESLER: Yes.

10 Q. If you look at page 31, printed
11 page 31.

12 A. Okay.

13 Q. First full paragraph. "A machine
14 guarding upgrade program is ongoing in order to
15 comply with the safety requirements stipulated
16 in French decree 93-40, no EC Complaint label
17 was noted on the machines at the time of the
18 visit. This upgrade program should also reduce
19 cuts and other accidents described above."

20 I am told I said Complaint, I
21 should have read compliance, I apologize.

22 THE ARBITRATOR: EC, European
23 Community label that is what you're talking
24 about?

25 MR. CHESLER: Yes, I believe so.

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1 JOHN LEASE - REDIRECT

2 Q. Would you look at page 38 in the
3 same Phase I report. Again for Toulouse. Page
4 38.

5 A. Okay.

6 Q. Next to the last paragraph on the
7 page. Printed page of the Toulouse report.
8 Next to the last paragraph. It says "Site
9 management" by the way, site management that ERM
10 was reporting about here was Fairchild's site
11 management; right?

12 A. Right.

13 Q. They still owned this plant.

14 A. Correct.

15 Q. At the time. It says "They are
16 aware of the following noncompliance health and
17 safety issues. The site has yet to complete the
18 last phase of the machine guarding/upgrade plan
19 estimated to be completed during 2002" goes on
20 then to talk about fire protection.

21 Then the last sentence says "It is
22 recommended that the facility representatives
23 complete the machine guarding program and make
24 the fire fighting system fully operational."

25 That is what you read in the

Page 1369

1 JOHN LEASE - REDIRECT

2 report. It was sent on to Fairchild; correct?

3 A. Correct.

4 Q. Now let's look at Montbrison.

5 Which is in volume 11 of the bulk exhibit.

6 Let's look at page 27. Sorry, first page 20. I
7 apologize. Page 20. Montbrison. Bottom of the
8 page under Occupational Safety.

9 A. Okay.

10 Q. Do you see it says there is "A plan
11 for putting the machines in compliance with the
12 EC regulations, however it has not been
13 completed. The plan was stopped due to work
14 overload and planning for this activity was
15 given to the work inspection team and the
16 retrofit was expected to have been completed by
17 the end of 2001."

18 So they had a plan in place, they
19 were retrofitting the machines, putting the
20 guards on, they stopped the program and although
21 it had been expected to have been completed by
22 end of '01 apparently it was not done as of this
23 point in '02; correct?

24 A. Correct.

25 Q. Now, if you go to page 27. You see

Page 1370

1 JOHN LEASE - REDIRECT

2 in the second full paragraph, no I guess the
3 third full paragraph on the page it repeats that
4 the site has not completed the safety plan for
5 putting the machine into compliance with EC
6 Regs?

7 THE ARBITRATOR: Page 27?

8 MR. CHESLER: Yes. Third
9 paragraph.

10 Q. It says "It is recommended this
11 plan be completed and applied to ensure worker
12 safety," that is completed and applied to put
13 the machines in compliance with EC regulations;
14 correct?

15 A. Correct.

16 Q. Now, let's look at Hildesheim,
17 Phase I for Hildesheim. Page 29 printed page
18 29. You see at the very bottom of 29 and over
19 to the top of 30, it says "The German
20 legislation requires that employees be protected
21 against risks during their work during a site
22 inspection the authorities noted an open area on
23 a machine which must be closed." It says "that
24 puts the employees in potential danger. And it
25 is recommended that a system be put in place to

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Page 1371

1 JOHN LEASE - REDIRECT
 2 ensure worker safety through proper machine
 3 guarding." Correct?
 4 A. Correct.
 5 Q. Let's look at Kelkheim. Page 23 of
 6 the Phase I for Kelkheim. Under Compliance
 7 Issues. The last paragraph under Compliance
 8 Issues. It says, again, here as it did in the
 9 prior report, the other German facility that
 10 "German law requires employees be protected
 11 against risk during their work and at press and
 12 drilling units machine guarding was found to be
 13 a need of improvements as a result of internal
 14 risk assessment. The recommendation is that a
 15 system be put in place to assure that proper
 16 safety precautions be adhered to." Correct?
 17 A. Correct.
 18 Q. Just to putting again the
 19 chronology in place, after all the Phase Is are
 20 sent, after the deal closes, the gap analyses
 21 are done and in the first months of '03 you send
 22 at least four separate letters about four major
 23 sites, every one of them mentions machine
 24 guarding which you previously told us is a
 25 Fasteners Environmental Condition you notified

Page 1372

1 JOHN LEASE - REDIRECT
 2 them of and informed them of what your plan was
 3 to do about it; correct?
 4 A. Correct.
 5 THE ARBITRATOR: These reports you
 6 went through are all Phase I; right?
 7 MR. CHESLER: Yes, your Honor.
 8 They were all provided during 2002. Prior to
 9 the closing of the transaction in December.
 10 Q. Now, you understand, don't you, Mr.
 11 Lease, that Fairchild' position with respect to
 12 machine guarding is that they won't pay for it
 13 because it's not covered by the indemnity
 14 provision; isn't that your understanding of
 15 their position?
 16 A. I think they specifically say it is
 17 not a Fasteners Environmental Condition.
 18 Q. So you can notify them from now
 19 until the cows come home, they say that's
 20 interesting, but you are notifying us about
 21 something we are not obligated to pay under any
 22 circumstances; isn't that what they have told
 23 you?
 24 A. Essentially, yes.
 25 Q. This isn't a notice issue, this is

Page 1373

1 JOHN LEASE - REDIRECT
 2 a definitional issue; isn't it?
 3 A. Yes.
 4 Q. By the way, Mr. Zurofsky must have
 5 said eight times during the cross-examination
 6 you're still doing machine guarding work, you
 7 have got more to do. Do you recall him saying
 8 that?
 9 A. Yes.
 10 Q. I'll tell you the numbers they are
 11 what they are, it indicates you spent maybe
 12 something on the order of 3 million so far on
 13 machine guarding. You understand that Alcoa is
 14 estimating it has something like \$15 million
 15 more machine guarding expense staring it in the
 16 face?
 17 A. I am vaguely aware of that. I
 18 think the business prepared some kind of
 19 estimate around that, yes.
 20 Q. As far as you know through the
 21 prior communications you did before we got into
 22 this dispute resolution process and through all
 23 the materials that have been provided to
 24 Fairchild's counsel through this dispute
 25 resolution process, are you aware of anything

Page 1374

1 JOHN LEASE - REDIRECT
 2 the company has done, any study, any analysis,
 3 any report relating to machine guarding that
 4 they don't have?
 5 A. Not at this point, no.
 6 Q. So they have got everything, I will
 7 tell you they had it for three, four months,
 8 that is the lawyer's job, we produced
 9 everything, everything was produced at least by
 10 last September. You have \$15 million more to
 11 spend, counsel says you are doing it, he knows
 12 you still have to spend more money, to this day
 13 have you gotten a single comment from Fairchild
 14 about machine guarding ahead of all the \$15
 15 million you haven't spent yet?
 16 A. No, I have not.
 17 Q. Let me ask you to look at what we
 18 marked as Exhibit 165.
 19 THE ARBITRATOR: Before you change
 20 the subject, Mr. Chesler, while we are on this
 21 subject I have a question.
 22 MR. CHESLER: Yes, sir.
 23 THE ARBITRATOR: Of the witness.
 24 I know in this arbitration Fairchild has made
 25 definitional objections to the inclusion of

Page 1375

JOHN LEASE - REDIRECT

machine guarding based on the definitions in the contract. But as I am trying to recall all of the letters they wrote, it seemed to me that a number of those letters they ask for more information on machine guarding and various other things.

THE WITNESS: They asked for more information on assessments, reports, so forth.

THE ARBITRATOR: In other words, did they actually make this definitional objection to you in the course of this or is that something that has just come up more recently with the lawyers in the arbitration? Do you recall?

THE WITNESS: Well, I believe there is correspondence from Fairchild prior to this arbitration where they have stated machine guarding, we have not demonstrated that machine guarding is a Fasteners Environmental Condition.

THE ARBITRATOR: They made that objection, but at the same time they asked for more documentary information about this subject, because they had more than one ground of objection.

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JOHN LEASE - REDIRECT

THE WITNESS: Well, initially they did ask for more information. Subsequently when we sent them basically claims, they basically said --

THE ARBITRATOR: That they had no liability?

THE WITNESS: Yes.

THE ARBITRATOR: All right. Go ahead Mr. Chesler.

MR. CHESLER: Yes, your Honor. Thank you. Your Honor, I would like to show the witness we have marked as Alcoa Exhibit 165.

Q. The first page and back of the first page is in French, but if you turn to the next page you will see an English translation this was produced from the files we inherited from Fairchild. This relates, your Honor, to the St. Cosme facility in France.

You see, Mr. Lease, in the middle, I am on the English page which ends with the number 726 at the bottom right-hand corner. Are you there?

A. Yes.

Q. You see in the middle page there is

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JOHN LEASE - REDIRECT

a letter from apparently the labor inspector for the district in which St. Cosme is located saying significant measures must be taken in order to reduce the exposure of employees to noise pollution. Then I want you to look down one paragraph below that. "The moving housed parts of the machines must be in housings. This placement in conformity cannot be limited to the new machines or those that you consider the most dangerous."

Then it goes on to say "You are using products that are hazardous to the health of the employees" and cites labor code they say prohibits that.

You recall on cross-examination you said several times your understanding was that you were in many instances informing Fairchild of problems about which they already knew?

A. Yes.

Q. When you were doing the gap analysis and traveling around to the different sites were you told by the former Fairchild employees about a lot of these Fasteners Environmental Conditions that they already knew

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JOHN LEASE - REDIRECT

about before you got there?

A. Yes.

Q. Including the machine guarding problems at St. Cosme?

A. Yes. We spoke with people in the maintenance organization as well as EHS staff around machine guarding and production.

Q. Let me show you Exhibit 95. This is also from the former Fairchild files relating to St. Cosme. Again it begins in French then goes to English would you look at the page that ends the page that ends 729.

A. Okay.

Q. You see this again is from back in the year 2000. At that time Fairchild owned the St. Cosme facility; correct?

A. Correct.

Q. You see there are estimates here for machine guarding on a whole list, long list of different machines used in the St. Cosme facility?

A. Yes.

Q. This estimate from 2000 is over 6 million Euros; do you see that?

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Page 1379

1 JOHN LEASE - REDIRECT
 2 A. Yes.
 3 Q. Francs, excuse me.
 4 A. Yes.
 5 Q. Now, when you in fact inherited St.
 6 Cosme, was there still substantial machine
 7 guarding work that Alcoa had to do?
 8 A. Yes, there was.
 9 Q. That was pointed out in the Phase
 10 Is and pointed out again in the gap analysis;
 11 correct?
 12 A. Yes. It was.
 13 THE ARBITRATOR: Just looking at
 14 this letter --
 15 MR. CHESLER: 95, your Honor.
 16 THE ARBITRATOR: Yes. The one
 17 we're on now. Simmons was the name of
 18 Fairchild's facility in St. Cosme?
 19 MR. CHESLER: Yes.
 20 THE ARBITRATOR: This was a letter
 21 I am trying to figure out what exactly this is.
 22 MR. CHESLER: This apparently was
 23 a report that was done by consultants for them
 24 internally at their facility on among other
 25 things, costs of equipping a whole long list of

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1 JOHN LEASE - REDIRECT
 2 machines used at the facility for machine
 3 guarding, two years before.
 4 THE ARBITRATOR: This was an
 5 internal report?
 6 MR. CHESLER: Yes.
 7 THE ARBITRATOR: Top right-hand
 8 side it says labor inspector Mr. Caspar, with an
 9 address.
 10 MR. CHESLER: Apparently what they
 11 did is shared this information with the labor
 12 inspection, the actual estimates as far as we
 13 can tell were done internally within the
 14 company. Either entirely or in large measure
 15 the replacement were not done, Alcoa then bought
 16 the facility.
 17 THE ARBITRATOR: This list we were
 18 referring to on 729 is a list of the machines
 19 they're talking about? Amtec Tower, Davenport
 20 Tower?
 21 THE WITNESS: Yes, there is a
 22 list on the other side, also, a two page table,
 23 I believe.
 24 THE ARBITRATOR: Thank you.
 25 Q. I would like to switch to a

Page 1381

1 JOHN LEASE - REDIRECT
 2 different topic. That is the topic of
 3 groundwater at Torrance which was the subject of
 4 a lot of questioning during your
 5 cross-examination.
 6 So the subject is the groundwater
 7 issue at the Torrance facility in California;
 8 Mr. Lease.
 9 A. Yes.
 10 Q. Do you remember you were questioned
 11 at some length about that on cross-examination.
 12 I would like to start with Alcoa Exhibit 120.
 13 You see this appears to be document entitled
 14 Schedule 324 environmental matters.
 15 A. Yes.
 16 Q. You remember that there were
 17 various schedules attached to the agreement the
 18 agreement between Alcoa and Fairchild?
 19 A. Yes.
 20 Q. I want you to look at the first
 21 page of this document. At the bottom of the
 22 first page, the last entry entitled Fairchild
 23 South Bay, Torrance. Do you see that?
 24 A. Yes.
 25 Q. It says "Air permit violation" then

Page 1382

1 JOHN LEASE - REDIRECT
 2 there is some reference to an air permit
 3 violation.
 4 A. Okay.
 5 Q. Do you see anything in there about
 6 a groundwater problem at Torrance?
 7 A. No.
 8 Q. You were asked 30, 40, 50
 9 questions, maybe more about the groundwater
 10 problems that were going on while Fairchild
 11 owned it and what Alcoa did and the studies
 12 Alcoa did to follow-up on the groundwater
 13 problems when it took over. Do you remember
 14 that subject?
 15 A. Yes.
 16 Q. Nothing in this disclosure schedule
 17 you're aware of from Fairchild that said
 18 anything to Alcoa about a groundwater problem.
 19 They talked about air permit violation. Do you
 20 see that?
 21 A. I see that.
 22 Q. Let's look at moving
 23 chronologically Alcoa Exhibit 143. You're
 24 aware, are you, that among the documents that
 25 Fairchild provided from time to time to its

Page 1383

JOHN LEASE - REDIRECT

auditors as Alcoa does to its auditors were documents disclosing potential liabilities to the company for which the accountants needed to be on notice?

A. I am aware of that general report. Yes.

Q. The document I just placed in front of you, Exhibit 143 appears to be a letter to Ernst & Young regarding the Fairchild Corporation dated August 29, 2002. On the back page you will see the signature line is by Michael Hodge. There is a copy to Donald Miller, general counsel of the company. Do you see that?

A. Yes.

Q. Do you know whether the due diligence team at Alcoa looked at the reports that Fairchild provided to its auditors looking for what disclosures of EHS risks had been provided to the auditors?

A. The due diligence team?

Q. Yes.

A. I don't have firsthand knowledge of that, no.

Page 1384

JOHN LEASE - REDIRECT

Q. The document speaks for itself. If you don't have firsthand knowledge of it then I am not going to ask you about that one.

Now I want to show you the Phase I report for Torrance. Okay.

A. Okay.

Q. We looked at the first version of the disclosure schedule that was attached to the agreement. Now I want you to look at the Phase I report for Torrance. This comes from bulk Exhibit A, volume 6.

Would you turn to printed page 49, please.

A. Okay.

Q. Do you have printed page 49?

A. Yes. I do.

Q. Do you see property issues, the heading at the top of the page?

A. Yes.

Q. Do you see toward the top, it talks about how there are at least 14 underground storage tanks at the facility?

A. Yes.

Q. That they have stored PCE and other

Page 1385

JOHN LEASE - REDIRECT

materials, waste oil, oily waste, etc., that there have been spills and leaks of PCE and other materials at all four areas they looked at?

A. Yes.

Q. That in one area levels of mineral spirits reached over 20,000 parts per million at a depth of 25 feet. The tank installation practices in one area were poor.

Then it says "Remedial activities have been undertaken at all four areas to different degrees" talks about soil confirmation sampling being performed in two areas, residual soil contamination remains in all four areas.

Do you see that?

A. Yes.

Q. Then it says, "Groundwater believed to be present in discontinuous lenses at a depth of about 90 feet beneath the site. No groundwater wells have been installed at the site, it is therefore unknown whether any of the leaks that they were talking about up above have affected shallow or deeper groundwater."

Then the Phase I says "It is

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JOHN LEASE - REDIRECT

recommended that a Phase II investigation be performed in all four of these areas to confirm sufficient remedial activities have been performed. Since no groundwater testing has been performed it is recommended that groundwater samples be collected using hydro punch techniques in each of the four areas. And as necessary, based on field observations, etc."

So far as you know after this was provided to Fairchild and talked about doing Phase II drilling down into the ground, checking to see if the groundwater was contaminated with these substances, did anybody at Fairchild say to you don't do this, we do not want any further work done pursuing this groundwater problem at Torrance?

A. Not to me, no.

Q. We heard prior testimony there was amended Schedule 3.24 provided to Alcoa. I want to show you Alcoa Exhibit 119.

I would like you to look on the second page of 119 which has Bates number ending 20 on it. Do you have that?

A. Yes.

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Page 1387

1 JOHN LEASE - REDIRECT
 2 Q. You see there are two entries for
 3 Fairchild Fasteners toward the top, on the top
 4 half of the page?
 5 A. Yes.
 6 Q. In Torrance -- sorry, one in
 7 Torrance. The first full entry on the page.
 8 A. Yes.
 9 Q. I will tell you that is the only
 10 one for Torrance in this disclosure schedule.
 11 Do you see anything in there about the
 12 groundwater problem?
 13 A. No, I do not.
 14 Q. It wasn't in the first one, wasn't
 15 in the second one. But your consultants found
 16 it and reported on it in the Phase I; correct?
 17 A. That's correct.
 18 Q. So the Phase II was in fact done as
 19 recommended in the Phase I report for Torrance;
 20 wasn't it?
 21 A. Yes.
 22 Q. Before the Phase II was done you
 23 recall you testified both on direct-examination
 24 and cross-examination about scopes of work that
 25 were prepared and provided to Fairchild?

Page 1388

1 JOHN LEASE - REDIRECT
 2 A. Yes.
 3 Q. Let me show you, this is E. I am
 4 told you may have one, your Honor, I don't know
 5 if you do not. Exhibit E these are the scopes
 6 of work for Phase IIs. Would you turn to the
 7 tab labeled Torrance. Do you have that?
 8 A. Yes.
 9 Q. You see on the first page behind
 10 that tab which ends with Bates number 387?
 11 A. Okay.
 12 Q. It gives a list of, there is a
 13 chart in the middle of the page, gives sample
 14 locations, media, depth, sample type, analytical
 15 parameters, do you see all those columns?
 16 A. Yes, I do.
 17 Q. Do you see the second entry and
 18 sixth entry?
 19 A. Yes.
 20 Q. Both talk about sampling
 21 groundwater?
 22 A. Yes.
 23 Q. In two different sample locations;
 24 correct?
 25 THE ARBITRATOR: I am under

Page 1389

1 JOHN LEASE - REDIRECT
 2 Torrance?
 3 MR. CHESLER: Yes, your Honor in
 4 the middle of the page, the chart.
 5 THE ARBITRATOR: First page.
 6 MR. CHESLER: Yes. First page
 7 which ends with Bates number 387. Lower
 8 right-hand corner. Middle of the page, the
 9 chart that has columns that start with Sample
 10 Location.
 11 THE ARBITRATOR: Yes.
 12 MR. CHESLER: Second line entry A
 13 1 groundwater.
 14 THE ARBITRATOR: Right.
 15 MR. CHESLER: Then sixth entry A 4
 16 groundwater.
 17 Q. So in the SOWs that you provided to
 18 Fairchild, the scopes of work for Phase IIs that
 19 you provided, then met about in November, you
 20 told them, didn't you, that among all the other
 21 things you were going to do was you were going
 22 to do testing in the Phase IIs of groundwater at
 23 sample depths of about 90 feet using monitoring
 24 wells looking for all the different materials
 25 listed on the right-hand side of this chart; is

Page 1390

1 JOHN LEASE - REDIRECT
 2 that right?
 3 A. That's correct.
 4 Q. Then if you go to the next page
 5 which ends 388. Again the chart in the middle
 6 of the page, you told them you were also going
 7 to do groundwater sampling at sample location
 8 B 4 using an auger monitoring method looking for
 9 all the potential hazardous materials listed on
 10 the right-hand side of that line; correct?
 11 A. It is actually a monitoring well.
 12 Q. I read auger above. Sorry.
 13 A. Yes.
 14 Q. You gave them notice you were going
 15 to drill what appear to be three different wells
 16 in three different locations to test groundwater
 17 for a long list of potential contaminations;
 18 correct?
 19 A. Correct.
 20 Q. Did they ever say to you no, don't
 21 do this?
 22 A. No.
 23 Q. Then you in fact had the Phase IIs
 24 done, paid ERM to do them; correct?
 25 A. Correct.

Page 1391

JOHN LEASE - REDIRECT

Q. Let's look at the Phase II report for the Torrance facility. This comes from bulk Exhibit B, volume 5. So Phase I said you may have a big groundwater problem; right?

A. Right.

Q. You better do a Phase II, scopes of work laid out where you were going to drill, how you were going to drill, what you were going to look for; correct?

A. Correct.

Q. Then the Phase IIs were in fact done; correct?

A. Correct.

Q. Would you look at page printed page 18. We are looking at Phase II report for Torrance, which is in, from bulk Exhibit B, volume 5. Printed page 18, your Honor, which corresponds to the Bates number that end 579.

THE ARBITRATOR: Yes.

Q. Do you see that talks about the various regulations in force in California and the agencies that may need to be notified?

A. Yes.

Q. It talks about what if notification

Page 1392

JOHN LEASE - REDIRECT

is made, then there may be various requirements imposed?

A. Correct.

Q. Would you turn to the next page, page 19. It says under reporting toward the top of the page, "notification of a significant spill or threatened release to the California office emergency services must occur verbally and immediately upon discovery, written reports follow verbal notifications." Do you see that?

A. Yes.

Q. Then it goes down under Site Assessments to say "further site assessment and need for remedial action follows after initial notification of a spill or threatened release?"

A. Yes.

Q. It goes on in the next paragraph under 4.1.2 to say "Each step of investigation is preceded by the preparation of a work plan approved by the agency prior to the start of work. The results may lead immediately to the preparation of corrective action plans or remedial action plans, etc." do you see that?

A. Yes.

Page 1393

JOHN LEASE - REDIRECT

Q. Would you turn to page 30, printed page 30 which corresponds to the Bates number ending 592?

A. Okay.

Q. Do you see under groundwater this talks about what they found in the Phase II studies when they sampled the groundwater. Do you remember one of the locations you told them you were going to drill at was B 4?

A. Yes.

Q. It says here talking about B 4, middle of the page "the only VOC detected in the groundwater sample from this location was PCE at concentration of 6800 micrograms per liter." Do you see that?

A. Yes.

Q. This amount of PCE significantly exceeds the 5 micrograms per l -- what is?

A. Per liter. Maximum contaminant level.

Q. So this is saying that the maximum level that they would allow in the California law was 5 micrograms per liter. And in fact they detected here 6800 micrograms per liter, is

Page 1394

JOHN LEASE - REDIRECT

that what this says?

A. Yes.

Q. This says "high reported concentration has caused increase in detection limits for other chlorinated VOCs potentially masking their detection," says "this detection of PCE suggests significant impact to the groundwater under the site." It goes on to talk about other findings. You provided this to Fairchild as well; correct?

A. Correct.

Q. You gave them these reports only after it had been mentioned in the Phase I and in the scopes of work; correct?

A. Correct.

Q. This was you found a condition that was already in play when they owned it; correct?

A. Correct.

Q. We heard some testimony about why you went to the authorities or did Alcoa go to the authorities. You heard the expert witness who testified during the break in your testimony talk about his experience with the California regulators and how it works if you don't enter

91 (Pages 1391 to 1394)

Page 1395

1 JOHN LEASE - REDIRECT
 2 into a decree with them. Did you hear that?
 3 A. Yes.
 4 Q. Let me show you Exhibit 167, Alcoa
 5 167. Do you see these are emails from earlier,
 6 just about a year ago February of 2006?
 7 A. Yes.
 8 Q. You see the email at the top of the
 9 page is from someone named Charles Stone at the
 10 DTSC?
 11 A. Yes.
 12 Q. You recognize that as the
 13 government agency in California we were talking
 14 about earlier?
 15 A. Yes.
 16 Q. Do you know Greg Pfeifer?
 17 A. Yes, I do.
 18 Q. Who is Greg Pfeifer?
 19 A. Greg is an attorney in the
 20 environmental practice area in Alcoa.
 21 Q. The subject is Torrance; right? It
 22 says about the fifth line down, subject
 23 Torrance?
 24 A. Yes.
 25 Q. Mr. Stone of the government agency

Page 1396

1 JOHN LEASE - REDIRECT
 2 DTSC writes to Mr. Pfeifer "Greg at this date
 3 there are two options available for Alcoa either
 4 enter into the CACA or DTSC will issue a
 5 unilateral order demanding the site be
 6 remediated in a timely fashion. Should you have
 7 any questions please feel free to contact me."
 8 Just in case that wasn't clear enough.
 9 Is that consistent with what our
 10 expert told us California regulators do?
 11 A. Yes.
 12 Q. Agree or else; right?
 13 A. Yes.
 14 Q. Did you have any understanding that
 15 you were under some kind of duty to consult with
 16 or see what the Fairchild people thought you
 17 should do with this gun pointed at Alcoa's head?
 18 A. No.
 19 MR. ZUROFSKY: Objection to the
 20 characterization of the gun.
 21 Q. Withdrawn. Did you believe you
 22 were under any obligation to consult with
 23 Fairchild with respect to the position taken by
 24 the DTSC concerning the groundwater problems at
 25 Torrance?

Page 1397

1 JOHN LEASE - REDIRECT
 2 A. No.
 3 THE ARBITRATOR: This refers to
 4 Torrance. Is that what it is referring to, the
 5 groundwater problem?
 6 MR. CHESLER: Yes, your Honor, it
 7 is.
 8 Q. Two other subjects and then we're
 9 done. They asked you about the parking lot
 10 situation in Toulouse. I shouldn't say they.
 11 Counsel asked you. Correct?
 12 A. Yes.
 13 Q. Again, was this a situation where
 14 Fairchild was saying we're not going to pay you
 15 because you didn't give us enough notice or were
 16 they saying we are not going to pay you because
 17 we don't think this is a Fasteners Environmental
 18 Condition?
 19 A. I think they were saying it was not
 20 a Fasteners Environmental Condition.
 21 Q. You have been at this compliance
 22 consulting job for quite a while; haven't you?
 23 A. Yes.
 24 Q. Can you tell us if there is a
 25 serious safety problem at the Toulouse --

Page 1398

1 JOHN LEASE - REDIRECT
 2 THE ARBITRATOR: Probably haven't
 3 had this much fun in a long time though, huh?
 4 THE WITNESS: Is that what this
 5 is?
 6 Q. Ever since that sleeping on nails
 7 night at the fraternity house you haven't had a
 8 time like this.
 9 So, if there were an emergency at
 10 the Toulouse facility, people were injured by
 11 fire or by some explosion, whatever, and the one
 12 entry points to the parking lot were for some
 13 reason blocked, based upon your experience in
 14 safety compliance, do you think that might have
 15 some impact on the well-being of the people
 16 inside the facility?
 17 A. I wouldn't even need to be a safety
 18 compliance expert to know there would be an
 19 impact. Yes.
 20 Q. By the way, the cost estimates you
 21 were shown for doing whatever work the permit
 22 required at Toulouse, they weren't up a lot;
 23 didn't they?
 24 A. Yes, they did.
 25 Q. Is Alcoa making a dime on any of

Page 1399

JOHN LEASE - REDIRECT

that? Are you billing these guys for more than it is going to cost you to do what the French permit requires you to do?

A. No. The best we can do is break even.

Q. The best we can do. Assuming they are ordered to pay you and they pay you, all you do is break even?

A. Yes.

Q. Last subject. You were asked some questions about remediation. Let me ask you to look, do you have the book up there we used during direct-examination?

A. Yes, I do.

Q. Would you turn to tab 18, please. Do you have tab 18, Mr. Lease?

A. I'm there.

Q. We have seen this letter on direct-examination. You saw it on cross-examination. This is the letter from Mr. Beckford to you from February 26, 2004, Alcoa Exhibit 32; correct?

A. That's correct. If I may point out one error in this letter.

Page 1400

JOHN LEASE - REDIRECT

Q. Yes?

A. My title is not esquire.

Q. Well it is now. We are going to give you an honorary degree after today.

You remember this is the letter where Mr. Beckford went through and categorized different requests for payment you had made into category 1, 2, and 3?

A. Yes.

Q. You were asked a lot of questions on cross-examination about the fact that he asked you to take the category 3 stuff and sort it out in various ways and come back with more information. Do you remember that?

A. Yes.

Q. Then you were shown the chart that I think counsel told you was prepared actually by Mr. Hodge that follows the body of the letter. That begins at page 297. Do you recall that?

A. Yes.

Q. Counsel pointed out to you there were some items on this list that had a capital Y on them, do you remember that?

Page 1401

JOHN LEASE - REDIRECT

A. Yes.

Q. He pointed out that according to this letter Y says that "Cost of this portion of the report may be appropriate for indemnification depending on what if any remedial action is recommended/required." Do you remember that?

A. Yes.

Q. So the dangle of a possible payment with a capital Y. What counsel didn't show you, what I want to go back to, is the letter that you received almost exactly a year later from Ms. Hall who by then had replaced Mr. Beckford as the contact person on the Fairchild side.

Would you look at tab 19, please.

A. Okay.

Q. This is in fact the letter you received from Ms Hall; correct?

A. Yes, it is.

Q. I want you to turn to the second page of this letter, the backside, I believe of the first page if you have two-sided copy. Bates number 340 on it.

A. Yes.

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JOHN LEASE - REDIRECT

THE ARBITRATOR: Tab 19?

MR. CHESLER: Yes. In the direct exam book. On the backside of the first page of the document. Bates number 340 at the bottom. Do you have that, your Honor.

THE ARBITRATOR: I have it. What is the page, 340?

MR. CHESLER: Yes.

Q. I want you to look at the next to the last paragraph on this page from Ms. Hall. The paragraph that begins "the agreement requires." Do you have that?

A. Yes.

Q. The second sentence of that paragraph she told you the following. "None, none of the various reports, assessments or site characterizations undertaken by Alcoa was in response to a Fasteners Environmental Condition. Without an Environmental Condition Alcoa's commissioning various environmental assessments was and is an ordinary business expense voluntarily incurred by Alcoa." That is what she told you?

A. Yes.

93 (Pages 1399 to 1402)

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Page 1403

1 JOHN LEASE - REDIRECT
 2 Q. She went on to say, bottom
 3 paragraph "In short, Alcoa can commission all
 4 the environmental assessments it wishes. Such
 5 assessments, be they environmental, workplace,
 6 health and safety or OSHA, are not Fasteners
 7 Environmental Liabilities. " Then she drops a
 8 footnote.
 9 Did you have any question in your
 10 mind, was that ambiguous to you at all what her
 11 position was?
 12 A. Yes, it was.
 13 Q. Let's look at the footnote -- you
 14 said it was ambiguous to you?
 15 A. Yes.
 16 Q. How was it ambiguous?
 17 A. Well, let me read it again. Well
 18 in the first sentence she said that the, without
 19 environmental condition Alcoa's commissioning is
 20 an ordinary business expense. In the second
 21 sentence she says that we can commission all of
 22 the environmental assessments we wish to
 23 undertake.
 24 Q. She doesn't say she is going to pay
 25 you for them; does she?

Page 1404

1 JOHN LEASE - REDIRECT
 2 A. No.
 3 Q. In fact she says such assessments,
 4 whether environmental or workplace health and
 5 safety or they are OSHA are not Fasteners
 6 Environmental Liabilities; isn't that what she
 7 says?
 8 A. Yes.
 9 Q. If they are not a Fasteners
 10 Environmental Liability, according to Fairchild,
 11 they are not going to pay you for them; are
 12 they?
 13 A. That's correct.
 14 Q. Then she drops the footnote --
 15 sorry, I want to go on to the text then he with
 16 will go to the footnote. She says "The expenses
 17 associated with implementing a remedy based on
 18 those assessments might qualify, expenses
 19 associated with implementing a remedy based on
 20 those assessments might qualify. But not the
 21 assessments themselves. Unless and until there
 22 is a Fasteners Environmental Condition there is
 23 no basis for indemnification." Do you see what
 24 she says?
 25 A. Yes.

Page 1405

1 JOHN LEASE - REDIRECT
 2 Q. So you go to the doctor for a
 3 physical. If he tells you you've got eight days
 4 to live they will pay you for the physical. If
 5 he says you're fine, they won't. That is what
 6 it amounted to; right?
 7 A. Yes.
 8 Q. Is that your understanding of the
 9 agreement you were operating under?
 10 A. No. It is not.
 11 Q. Do you know whether you have a
 12 problem until you investigate to find it?
 13 A. No.
 14 Q. Now, let's look at the footnote.
 15 "On a related matter, by letter dated February
 16 26, 2004" by the way that is the letter we just
 17 looked at. One where Mr. Beckford divided stuff
 18 up and put some Ys in that counsel suggested
 19 meant boy, if only you played along maybe you
 20 would get paid, what does she say here she says
 21 with respect to that letter "We requested
 22 additional information regarding
 23 approximately --"
 24 THE ARBITRATOR: Sorry, where are
 25 you reading from now?

Page 1406

1 JOHN LEASE - REDIRECT
 2 MR. CHESLER: Footnote 1, your
 3 Honor.
 4 Q. She said she requested in that
 5 letter, Fairchild requested "Additional
 6 information regarding approximately 528,130.78."
 7 I am not sure how you get that approximate. It
 8 is like shooting approximately 71 in a golf
 9 match. Of Phase II assessment costs incurred by
 10 Alcoa. You have not provided such information.
 11 Here comes the kicker. "On further
 12 analysis we have determined that for the same
 13 reasons expressed in this letter, the
 14 \$528,130.78 in costs incurred by Alcoa are not
 15 indemnifiable. Such costs do not relate to a
 16 Fasteners Environmental Condition, rather they
 17 relate to Alcoa's 'kicking the tires' they are
 18 not Fasteners Environmental Liabilities and we
 19 reject any attempt by Alcoa to apply these sums
 20 against the 8 million," we have the numbers a
 21 little wrong "8,450,000 reserve, in short all of
 22 Alcoa's claims for indemnification under section
 23 11.6 for environmental assessments, lock tag and
 24 verify assessments machine guarding assessments
 25 or any other an assessments or characterizations

Page 1407

1 JOHN LEASE - RECROSS
 2 are rejected entirely."
 3 So the Ys on Mr. Beckford's chart
 4 got yanked; didn't they?
 5 A. Yes.
 6 Q. You weren't getting any money, no
 7 way, no how out of Ms. Hall; right?
 8 A. That's correct.
 9 MR. CHESLER: Further questions,
 10 your Honor.
 11 MR. ZUROFSKY: I will try to be as
 12 brief as I can.
 13 THE ARBITRATOR: I will give you
 14 five minutes.
 15 MR. ZUROFSKY: This witness was
 16 someone we were calling on our direct as well.
 17 I know we are running late.
 18 THE ARBITRATOR: It would be nice
 19 if we finish him tonight.
 20 MR. ZUROFSKY: We all agree that
 21 would be a good idea.
 22 CROSS-EXAMINATION BY MR. ZUROFSKY:
 23 Q. Mr. Lease, Mr. Chesler started with
 24 the agreement. So I will, too. Do you still
 25 have a copy of the agreement?

Page 1408

1 JOHN LEASE - RECROSS
 2 A. Yes.
 3 Q. Looking at page 83, top 84 end of
 4 section 111.6 C. At the bottom of page 83 says
 5 "the buyer shall afford," do you have the same
 6 version?
 7 A. Yes.
 8 Q. Last sentence "The buyer shall
 9 afford the sellers a reasonable opportunity to
 10 comment on the buyer's proposed response to a
 11 Fasteners Environmental Condition buyer shall
 12 not unreasonably refuse to incorporate the
 13 seller's comments." Do you see that, Mr. Lease?
 14 A. Yes.
 15 Q. I want to focus on two phrase
 16 there. Reasonable opportunities and buyers
 17 proposed response. Who is the buyer? Do you
 18 know who the buyer is in the agreement? Is the
 19 buyer Alcoa in the agreement?
 20 A. Yes.
 21 Q. The buyer is not ERM; is it?
 22 A. They are contracted by Alcoa.
 23 Q. The buyer is not -- ERM didn't buy
 24 the facilities did it?
 25 A. No, they did not.

Page 1409

1 JOHN LEASE - RECROSS
 2 Q. Mr. Chesler took you through a
 3 whole bunch of Phase Is in which ERM made
 4 recommendations. Do you recall that about
 5 machine guarding and other things?
 6 A. Yes.
 7 Q. We are going to look at those
 8 recommendations but we are also going to talk a
 9 bit. Those are recommendations from ERM to
 10 Alcoa; correct?
 11 A. Correct.
 12 Q. Did Alcoa adopt every single
 13 recommendation in the Phase Is?
 14 A. I don't know.
 15 Q. Did Alcoa do other things other
 16 than what was recommended in the Phase Is?
 17 A. Based on later information, I am
 18 sure that we did.
 19 Q. In fact Alcoa at the four facility
 20 we talked about performed gap analysis following
 21 Phase Is; right?
 22 A. Yes.
 23 Q. You told me the letters you
 24 provided to Mr. Hodge were based on those gap
 25 analysis; correct?

Page 1410

1 JOHN LEASE - RECROSS
 2 A. The basis for the letters was an a
 3 combination of the gap analysis report, the
 4 actual work that was done on site as well as
 5 information that we obtained from the Phase Is.
 6 Q. Alcoa just didn't go out and
 7 implement all of ERM's recommendations in the
 8 Phase Is and just do them; right?
 9 A. I don't know.
 10 Q. You said you performed gap
 11 analysis, you did some more study; right?
 12 A. Yes.
 13 Q. So it is not as if once ERM made
 14 the recommendation Alcoa adopted it as its own
 15 recommendation; is that right?
 16 A. In essence, we reviewed all the
 17 recommendations and implemented them as
 18 necessary.
 19 Q. After you had done further study?
 20 A. Well we had to tailor them to
 21 specific facility, but that was the purpose of
 22 the gap analysis to define those a little more
 23 clearly for Fairchild.
 24 Q. When you write to Mr. Hodge in
 25 connection with those letters with the summary

95 (Pages 1407 to 1410)

Page 1411

1 JOHN LEASE - RECROSS
 2 charts that we looked at, we can look at one of
 3 them if you want. Turn to page 16 for Toulouse
 4 you talked about this is the summary chart of
 5 your gap analysis for Toulouse that is attached
 6 to this letter.
 7 A. Yes.
 8 Q. You see the first line there, it
 9 says "We have completed our initial
 10 environmental, health and safety review of the
 11 Toulouse facility."
 12 A. Yes.
 13 Q. You are talking about gap analysis
 14 there; right?
 15 A. Environmental health and safety
 16 reviews, gap analysis is the same thing.
 17 Q. You don't mention Phase I anywhere
 18 in this cover letter to Mr. Hodge; do you?
 19 A. No.
 20 Q. You don't say here we are
 21 implementing recommendations by ERM as Alcoa's
 22 own proposals; do you?
 23 A. No.
 24 Q. Let's talk about what was in those
 25 Phase Is. First one I won't hand you -- we will

Page 1412

1 JOHN LEASE - RECROSS
 2 do Fullerton first. Mr. Chesler handed you
 3 Fullerton. We had a lot of discussion today and
 4 yesterday about Fullerton and machine guarding;
 5 right, Mr. Lease?
 6 A. Yes.
 7 Q. Mr. Chesler said to you, was
 8 Fullerton recommendation, the recommendation
 9 contained in Fullerton Phase I regarding machine
 10 guarding; do you remember that?
 11 A. Yes.
 12 Q. He pointed you to page 71. Do you
 13 recall that?
 14 A. Yes.
 15 Q. Look at page 71 the Fullerton
 16 facility consists of two plants and a warehouse;
 17 right?
 18 A. Yes. I think that is true.
 19 Q. This is under heading Warehouse;
 20 right page 71. Do you see that?
 21 A. Yes.
 22 Q. They are separate if you turn back
 23 before there are separate headings for plant 1
 24 and plant 2?
 25 A. Okay.

Page 1413

1 JOHN LEASE - RECROSS
 2 Q. Now the recommendation Mr. Chesler
 3 read to you about machine guarding is under
 4 heading warehouse; right?
 5 A. Yes.
 6 Q. It says "It is recommended that the
 7 facility ensure that all machinery be equipped
 8 with proper guarding." Do you see that?
 9 A. Yes.
 10 Q. Let's move forward to your letter
 11 to Mr. Hodge about the Fullerton facility which
 12 follows this that is at tab 14. If you turn to
 13 the second page of the chart Bates 5000041. Do
 14 you see that?
 15 A. Yes.
 16 Q. There we have entry for machine
 17 guarding. Now it's talking about plant wide
 18 survey of machine guarding; right? Do you see
 19 that issue description?
 20 A. Yes.
 21 Q. Estimated cost is what?
 22 A. \$58,000.
 23 Q. How much did you spend, have you
 24 spent so far at Fullerton on machine guarding?
 25 A. 1 million.

Page 1414

1 JOHN LEASE - RECROSS
 2 Q. Over a million; right?
 3 A. Yes.
 4 Q. That was the subject of that
 5 recommendations we saw in the box yesterday from
 6 STI. Do you recall it said the proposal
 7 guarding solutions was in the cover letter?
 8 A. Yes.
 9 Q. That was facility wide; right?
 10 A. I believe so. Yes.
 11 Q. The box we looked at yesterday?
 12 A. Pardon.
 13 Q. The box we looked at yesterday?
 14 A. What box?
 15 Q. The box of documents for Fullerton.
 16 A. Oh, okay.
 17 Q. So that is Fullerton; right?
 18 A. Yes.
 19 Q. Mr. Chesler, you only sent these
 20 compliance gap letters for four facilities we
 21 talked about that?
 22 A. Yes.
 23 Q. Anywhere in those letters did you
 24 say, oh, these really speak for the rest of the
 25 facilities at all?

Page 1415

Page 1417

JOHN LEASE - RECROSS

A. No. This was a notice of environmental condition.

Q. At that facility?

A. At all four facilities plus it represented the conditions we found at the other plants based on information contained in the Phase Is which we went through.

Q. Hold on in the Phase Is and one of the ones Mr. Chesler showed you or a bunch of them I believe he pointed you to machine guarding language at among other facilities, Kelkheim, Stoughton, Montbrison, Hildesheim. Do you recall those four? They are probably right in front of you.

A. I recall it, the names, yes.

Q. Those are four other facilities than the four subject of the notice letters -- of the gap analysis letters we talked about; right?

A. Right.

Q. Those four all contain recommendations as Mr. Chesler took you through about machine guarding; right?

A. Yes.

Page 1416

JOHN LEASE - RECROSS

Q. As did the four for the letters we looked at; right?

A. Right.

Q. So, you sent four letters to Fairchild, but you didn't send them any gap analysis letters on the four I just mentioned Kelkheim, Stoughton, Montbrison or Hildesheim?

A. No gap analysis letters for those plants.

Q. All eight of them had statements in the Phase Is about machine guarding and recommendations; right?

A. Yes.

Q. How is Fairchild to know that Alcoa was going to proceed ahead with machine guarding at Kelkheim, Stoughton, Montbrison and Hildesheim?

A. How did they know we were going to proceed?

Q. Yes, to go ahead with machine guarding work.

A. They were noncompliance with the regulations. It is clear in the agreement that when there is an a noncompliance condition

JOHN LEASE - RECROSS

noted, it is a Fasteners Environmental Liability subject to indemnification.

Q. You sent them this gap analysis for four facilities; right.

THE ARBITRATOR: Fullerton Toulouse, what were the other?

Q. Torrance and St. Cosme. Right?

A. Yes.

Q. We looked at a lot this morning where Mr. Miller responded. We will talk about that in one second with respect to Judge Stapleton's question.

Mr. Miller responded then Mr. Harvey's letter covered those facilities, St. Cosme was a little different, but the other three?

A. Yes.

Q. That was the situation at those four facilities; right. There is no letter at the other facilities; right?

A. What other facilities.

Q. Any of the other facilities other than those four?

A. Yes.

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JOHN LEASE - RECROSS

Q. Including any of the ones that mentioned machine guardings in the Phase Is?

A. No letters, correct.

Q. Turn our attention, before doing that let's talk about others. Did you do machine guarding working at City of Industry Temple Avenue?

A. Yes.

Q. Here is the Phase I.

THE ARBITRATOR: Gap stands for what again?

THE WITNESS: The difference between actual condition and regulatory condition.

THE ARBITRATOR: It is not an acronym?

THE WITNESS: No.

THE ARBITRATOR: You just call it a gap.

Q. This is Phase I for City of Industry, Temple Avenue?

A. Yes.

Q. Any mention in there about machine guarding maybe we will draw your attention to

97 (Pages 1415 to 1418)

Page 1419

1 JOHN LEASE - RECROSS
 2 conclusions and recommendations?
 3 A. I don't see it in the conclusions
 4 and recommendations.
 5 Q. Nothing; right?
 6 A. Nothing on machine guarding here.
 7 Q. How about next one Simi Valley?
 8 Here is 437.
 9 (Arbitration Exhibit 437
 10 was marked.)
 11 Q. Alcoa performed machine guarding
 12 work at Simi Valley too, right?
 13 A. No.
 14 Q. Is there any mention of machine
 15 guarding in the conclusions and recommendations
 16 of that document?
 17 A. For Simi Valley?
 18 Q. Yes.
 19 A. I don't see any.
 20 Q. Mr. Chesler, actually Judge
 21 Stapleton asked you whether or not you recall
 22 that Fairchild had objected to machine guarding
 23 on the ground of notice or definitional or both.
 24 Do you recall that discussion?
 25 A. Yes.

Page 1420

1 JOHN LEASE - RECROSS
 2 Q. I want to draw your attention to
 3 two documents. First is Mr. Miller's response
 4 at Fullerton which is behind tab 15. Second
 5 paragraph. He says "In the first stance the
 6 letter and table lack sufficient specificity to
 7 satisfy the notice requirements under section
 8 11.6. In light of the foregoing Fairchild is
 9 unable to determine and in any event disputes
 10 whether all of these items," so on and so forth
 11 fall within ambit of section 11.6. I don't need
 12 to read on.
 13 Does that refresh your recollection
 14 that Mr. Miller was both claiming there was
 15 notice problem and also he was disputing whether
 16 or not this falls within the ambit of 11.6?
 17 A. I am not sure what the notice
 18 provisions are he is referencing. But to
 19 describe the condition that we found in the
 20 specific regulation that, where the
 21 noncompliance exists it is hard for me to
 22 understand how anybody could not see that a
 23 Fasteners Environmental Condition existed at
 24 that facility.
 25 Q. Subsequent to this didn't Alcoa go

Page 1421

1 JOHN LEASE - RECROSS
 2 out and spend a lot of money on producing those
 3 documents we looked at yesterday from STI to
 4 find out just what the problems were?
 5 A. They did that to identify what the
 6 solution was.
 7 Q. Do you want to go look back at
 8 those documents? Are you sure about that? I
 9 don't want to bring the box out again.
 10 A. The document contains a solution.
 11 Q. Doesn't it contain also a
 12 diagnostic for machine remember we looked at
 13 high risk, low risk, medium risk it was
 14 assessing each of the machines then proposing
 15 potential solution; does that refresh your
 16 recollection?
 17 A. I don't recall what came first in
 18 the document.
 19 Q. Turn in your correspondence binder,
 20 the one I handed to you under the section
 21 miscellaneous multiple facilities, the last tab.
 22 A. Where are we now.
 23 Q. Go to a letter dated January 31,
 24 2005. It is I would say about two-thirds of the
 25 way in in that tab?

Page 1422

1 JOHN LEASE - RECROSS
 2 A. On multiple facilities.
 3 Q. Yes. Last tab multiple facilities.
 4 Moving into about two-thirds of the way into
 5 that tab chronological. I want January 31, 2005
 6 if you don't mind?
 7 A. Okay.
 8 Q. You got it there?
 9 A. I have it.
 10 Q. It is a letter from Ms. Hall;
 11 right?
 12 A. Yes.
 13 MR. CHESLER: Sorry, counsel, the
 14 date?
 15 MR. ZUROFSKY: January 31, 2005.
 16 MR. CHESLER: Thank you.
 17 Q. Letter from Ms. Hall?
 18 A. Yes.
 19 Q. I want to focus on the paragraph,
 20 third paragraph, bottom third and equally
 21 telling?
 22 A. Yes.
 23 Q. "Third and equally telling is the
 24 fact that Alcoa seeks reimbursement for expenses
 25 incurred primarily in 2003, later 2004." Do you

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1 JOHN LEASE - RECROSS
 2 see that?
 3 THE ARBITRATOR: What paragraph
 4 are you on?
 5 MR. ZUROFSKY: Third paragraph,
 6 sorry, your Honor.
 7 Q. Let me first do the first
 8 paragraph. Let's do it in order. Look at the
 9 first paragraph which is first. Alcoa failed to
 10 demonstrate the guarding requirements of OSHA
 11 1910.212 or state or foreign equivalents are
 12 fastener environmental liability?
 13 A. Yes.
 14 Q. Do you understand OSHA 1910.212 to
 15 be machine regulation in OSHA?
 16 A. Yes.
 17 Q. Does this refresh your recollection
 18 that Hall and Fairchild were disputing
 19 requirements under that regulation constitute
 20 Fasteners Environmental Liabilities at this
 21 time?
 22 A. That is what I get from this.
 23 Q. That is before this arbitration
 24 proceeding and lawyers got involved; right? You
 25 don't know when the lawyers got involved? Go to

Page 1424

1 JOHN LEASE - RECROSS
 2 the third paragraph "Third and equally telling
 3 is the fact that Alcoa seeks reimbursement for
 4 expenses incurred primarily in later 2003 to mid
 5 2004." Do you see that?
 6 A. Yes.
 7 Q. "That raises two significant
 8 points. 1, Alcoa is in blatant disregard of
 9 sections 11.6 C and D of the Acquisition
 10 Agreement." See that?
 11 A. Yes.
 12 Q. Does that refresh your recollection
 13 Ms. Hall is also objecting on ground of failure
 14 of notice?
 15 A. Okay.
 16 Q. There were four letters sent as we
 17 looked at before which identified machine
 18 guarding but do you understand the subject of
 19 this letter, the one she is responding to be
 20 about more facilities than those four, do you
 21 understand what I'm saying?
 22 A. No.
 23 Q. She is responding to your letter;
 24 right?
 25 A. Yes.

Page 1425

1 JOHN LEASE - RECROSS
 2 Q. Your letter of December 20?
 3 A. Okay.
 4 Q. If you go back two letters in the
 5 binder I think that is your letter, December 20,
 6 2004 letter?
 7 A. Okay.
 8 Q. It refers to eight facilities
 9 there?
 10 A. Yes.
 11 Q. More than the four that we had the
 12 GAAP compliance discussion about earlier; right?
 13 A. That is more than four, yes.
 14 Q. Those were the four Mr. Harvey --
 15 well, three Mr. Harvey promised additional
 16 documentation to Fairchild about; right?
 17 A. I wouldn't say Mr. Harvey promised
 18 anything. We have been over this.
 19 Q. We don't have to redo that ground.
 20 A. Yes.
 21 Q. Counsel spoke to you at some length
 22 about Torrance; right? Do you recall that?
 23 A. Yes.
 24 Q. We discussed also, you discussed
 25 also Mr. Beckford's letter with, I think counsel

Page 1426

1 JOHN LEASE - RECROSS
 2 used the phrase dangling Y. Do you recall that?
 3 A. The Phase II?
 4 Q. Yes. Response to the Phase IIs?
 5 A. Okay.
 6 Q. Now let's go to that letter. I
 7 believe at tab 18 of that binder.
 8 A. I have it.
 9 Q. Did you, do you recall that counsel
 10 took you through whole chronology about
 11 Torrance; right?
 12 A. Yes.
 13 Q. Said Phase I identified problems
 14 then there is Phase II that identifies problems
 15 after scope of work had been provided do you
 16 recall that?
 17 A. Yes.
 18 Q. Subsequent to the Phase IIs at
 19 Torrance Alcoa did perform further
 20 investigations at that facility; correct?
 21 A. Yes, I believe we did.
 22 Q. Prior to the involvement of the
 23 DTSC and Consent Agreement those investigations
 24 happened in that interval; right?
 25 A. I have to check the chronology. I

99 (Pages 1423 to 1426)

Page 1427

1 JOHN LEASE - RECROSS
 2 don't know. I am losing track of time here.
 3 Q. I can show you documents for now
 4 can we work on that assumption.
 5 A. For the discussion, okay.
 6 Q. Mr. Beckford's letter is in
 7 response to the Phase IIs; right?
 8 A. Yes.
 9 Q. I want to turn again to the page FC
 10 299 okay. Do you recall Mr. Chesler talking
 11 about the former underground storage tanks at
 12 Torrance.
 13 A. Yes.
 14 Q. If you look at that first box, 9 A
 15 here on page 299. It is talking about former
 16 underground storage tanks. Do you see that
 17 there?
 18 A. Yes.
 19 Q. The last line of that comment
 20 section says "The source of this impact is not
 21 entirely clear from Alcoa's assessment." That
 22 being the Phase II assessment; right?
 23 A. I assume.
 24 Q. "However it present an issue which
 25 should be followed up" do you see that?

Page 1428

1 JOHN LEASE - RECROSS
 2 A. Yes.
 3 Q. Go back to the cover letter from
 4 Mr. Beckford, again early 2004 FC 296.
 5 A. Okay.
 6 Q. The last bit of text before the
 7 stars says "On those sites as to which we agree
 8 that there should be further investigation" we
 9 just looked at Torrance, right, as sites on
 10 which Fairchild indicated there should be
 11 further investigation; right?
 12 A. Yes.
 13 Q. "Please ensure that the actual
 14 investigative measures are first discussed with
 15 our designated representative Michael Hodge as
 16 required by section 11.6 of the Acquisition
 17 Agreement." Do you see that?
 18 A. Yes.
 19 Q. Now, prior to Ms. Hall's letter
 20 with the footnote that counsel ended on, did you
 21 discuss or communicate in any way prior to
 22 taking investigative work at Torrance with
 23 Fairchild?
 24 A. We sent them information. I am not
 25 sure we communicated directly with Mr. Hodge.

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1 JOHN LEASE - RECROSS
 2 But we considered the recommendations or
 3 suggestions in the table. Which was our
 4 requirement that we should reasonably consider
 5 the comments.
 6 Q. Comments on what? What is he
 7 commenting on, commenting on Phase I results of
 8 the reports; right?
 9 A. He also was commenting, in essence,
 10 on the proposed action.
 11 Q. Does it say that? Where does it say
 12 that?
 13 A. Present and issue which should be
 14 followed up.
 15 Q. At that point had Alcoa put
 16 together a proposal or scope of work as to how
 17 it should be followed up?
 18 A. Did he what?
 19 Q. Did Alcoa put together a proposal
 20 or scope of work as to how it should be followed
 21 up?
 22 A. I don't know. I don't recollect
 23 the documents. There they are.
 24 Q. Actually they are not there.
 25 That's the point. Scope of work is not there.

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1 JOHN LEASE - RECROSS
 2 Let's move forward. Ms. Hall, counsel spent a
 3 lot of time with you on Ms. Hall's letter of
 4 February 25, 2005; right in which she says in
 5 the footnote she says voluntary assessments and
 6 all that stuff. Do you recall that?
 7 A. Are we on her letter now?
 8 Q. Yes.
 9 A. Okay.
 10 Q. Right?
 11 A. Right.
 12 Q. That was in response the a letter
 13 you wrote on January 25, correct that is what it
 14 says there?
 15 A. Okay.
 16 Q. Let's look at that letter.
 17 THE ARBITRATOR: What tab?
 18 MR. ZUROFSKY: Tab of which one?
 19 THE ARBITRATOR: You are going to
 20 go to the Hall letter?
 21 MR. ZUROFSKY: The Hall letter is
 22 the response. The one Mr. Chesler spoke about
 23 at the footnote is at tab 19 of Mr. Chesler's
 24 binder. Now that was the letter Ms. Hall wrote
 25 in response to a letter from Mr. Lease which I

Page 1431

1 JOHN LEASE - RECROSS
 2 would like to look at now.
 3 Q. In my binder if you go to the
 4 Torrance tab.
 5 A. Okay.
 6 Q. A couple letters in there should be
 7 one from January 25, 2005?
 8 A. Okay.
 9 Q. Do you see it?
 10 A. Yes.
 11 Q. This is the letter Ms. Hall is
 12 responding to; right?
 13 A. Yes.
 14 Q. In this letter up at the top you
 15 say "Enclosed for your information are reports
 16 summarizing the results of recent soil and
 17 groundwater investigative activities undertaken
 18 by Alcoa at the former Fairchild Fasteners in
 19 Torrance and Fullerton subsequent to acquisition
 20 of the facilities by Alcoa." Do you see that?
 21 A. Yes.
 22 Q. That is work that had been done at
 23 those facilities already, yes?
 24 A. Yes.
 25 Q. It is not work related, it is not

Page 1432

1 JOHN LEASE - RECROSS
 2 the Phase IIs; right?
 3 A. No it is not.
 4 Q. If you turn two pages, there is a
 5 chart you attached. From that chart does it
 6 seem clear, sir, it wasn't just at Torrance and
 7 Fullerton that Alcoa performed work subsequent
 8 to the Phase IIs in terms of investigating the
 9 California sites?
 10 A. There are four plants listed here.
 11 Q. There is a cost of a million
 12 dollars at the bottom there?
 13 A. Yes.
 14 Q. Which is for work that had been
 15 done at that point January 25, 2005?
 16 A. Yes.
 17 Q. That work was in addition to the
 18 Phase IIs done at those facilities?
 19 A. This would have been yes.
 20 Q. Between the time of Mr. Beckford's
 21 letter where he says please discuss any of the
 22 investigations prior to the actual investigative
 23 measures with Mr. Hodge and this time when you
 24 send Ms. Hall -- Mr. Beckford, excuse me, the
 25 bill for a million dollars of subsequent

Page 1433

1 JOHN LEASE - RECROSS
 2 investigations at the California facilities did
 3 you in any way discuss or approach Fairchild
 4 about the investigations that are represented on
 5 this chart?
 6 A. I am not sure what reports preceded
 7 this January 25 letter.
 8 Q. Are you aware of any?
 9 A. Not offhand without looking at the
 10 binders.
 11 Q. They would be in the correspondence
 12 between you and Fairchild; correct?
 13 A. They would have been, yes.
 14 Q. If they are not there they didn't
 15 exist, you don't have any other recollection of
 16 communications; do you?
 17 A. No.
 18 Q. Another thing Mr. Chesler showed
 19 you was Phase II report for Torrance. Do you
 20 recall that it was Alcoa Exhibit volume B, bulk
 21 B, volume 5 of 15. Do you see it?
 22 THE ARBITRATOR: Where are you
 23 looking?
 24 MR. ZUROFSKY: Phase II for
 25 Torrance which Mr. Chesler handed out. Alcoa

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1 JOHN LEASE - RECROSS
 2 arbitration Exhibit B volume 5 of 15.
 3 THE ARBITRATOR: Go ahead. I
 4 don't need it, just proceed.
 5 Q. Page 19. Do you recall Mr. Chesler
 6 taking you through this page?
 7 A. I haven't found it up here yet.
 8 Okay. I will look at it on the screen here.
 9 Q. I want to focus in on section
 10 4.1.2.
 11 A. Okay.
 12 Q. Second paragraph. This is the
 13 Phase II for Torrance; right?
 14 A. Yes.
 15 Q. This is the document you say
 16 provided Fairchild with notice of Alcoa's
 17 proposed response with respect to investigations
 18 at Torrance; right?
 19 A. I am not sure if this is a general
 20 description of the process or what this
 21 represents.
 22 Q. I am asking about this document.
 23 It was your testimony earlier today, if I recall
 24 correctly the Phase IIs provided the information
 25 and notice about proposed further investigations

101 (Pages 1431 to 1434)

Page 1435

1 JOHN LEASE - RECROSS
 2 at the facilities; right?
 3 A. Well, the Phase IIs clearly define
 4 where the next activities were to occur.
 5 Q. In your view?
 6 A. Yes. In my view.
 7 Q. Responding to that Fairchild said
 8 with respect to Torrance, yeah, there might be
 9 need for further investigation; do you recall
 10 that?
 11 A. For Torrance?
 12 Q. Yes.
 13 A. Yes.
 14 Q. Mr. Beckford said please discuss
 15 with Mr. Hodge beforehand; right?
 16 A. Yes.
 17 Q. Read if you can this paragraph. I
 18 will read it "Each step of an investigation is
 19 preceded by the preparation of a work plan
 20 approved by the administrative agency prior to
 21 the start of work. The results of site
 22 assessments may lead immediately to preparation
 23 of corrective action plans or remedial action
 24 plans, but may cycle through several site
 25 assessments first to adequately define the

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1 JOHN LEASE - RECROSS
 2 extent of environmental impact at a site."
 3 Do you have any reason to doubt,
 4 sir, that is a process applicable to further
 5 site assessments past Phase II in these areas?
 6 A. I am not sure about the
 7 administrative agency aspect of it. I think
 8 that refers to a spill or threatened release.
 9 But in general the process that followed is do a
 10 scope of work defines the next steps that is
 11 based on the previous report findings.
 12 Q. Do you recall as well we looked at
 13 Exhibit 134 earlier today where there was email
 14 exchange between Mr. Hendrix and Mr. McShae.
 15 Your counsel objected, he said you weren't on
 16 the email chain. It discussed the Phase IIs and
 17 going forward in the Southern California sites?
 18 A. Vaguely, yes.
 19 Q. Do you recall the subject matter of
 20 that email was comments Mr. Hendrix might have
 21 on ERM's Phase IIs before they were sent to
 22 Fairchild?
 23 A. Yes.
 24 Q. Do you recall that Mr. Hendrix
 25 further said that in the big picture sense the

Page 1437

1 JOHN LEASE - RECROSS
 2 ERM suggestions were narrower than what Mission
 3 had planned at the Southern California sites?
 4 A. They were narrower?
 5 Q. Right.
 6 A. I'd have to look at the email again
 7 to get the wording.
 8 Q. The email will speak for itself.
 9 Do you recall we had that discussion earlier
 10 today?
 11 A. Yes.
 12 Q. Still on Torrance, Mr. Chesler
 13 showed you an email from DTSC. He referred to
 14 as the gun to the head email. Do you recall
 15 that?
 16 A. Yes.
 17 Q. Prior to that time do you know that
 18 Consent Agreements, the terms of which are
 19 subject to negotiation, Mr. Lease?
 20 A. Say again.
 21 Q. Are Consent Agreements negotiated
 22 documents, are the terms negotiated?
 23 A. Generally, yes.
 24 Q. I think we saw earlier today Alcoa
 25 received a draft of Consent Agreement at least

Page 1438

1 JOHN LEASE - RECROSS
 2 as early as September 2005. Do you recall that?
 3 A. Yes.
 4 Q. There was no drafts provided to
 5 Fairchild of that agreement prior to the
 6 execution of that agreement; right?
 7 A. No, it isn't necessary to do that
 8 under the agreement.
 9 Q. Let's look at the agreement then,
 10 go back to section 11.6 C.
 11 THE ARBITRATOR: The answer to his
 12 question is there weren't any; were there? Why
 13 do we have to go back to the agreement?
 14 MR. ZUROFSKY: That's fine.
 15 THE ARBITRATOR: I assume there
 16 were not, right, drafts of the Consent Agreement
 17 furnished to Fairchild before it was signed?
 18 THE WITNESS: That's right.
 19 Q. Second to last topic Mr. Chesler
 20 asked you about was the Toulouse parking lot.
 21 A. Yes.
 22 Q. Do you recall he asked you if it
 23 would be in your view as a safety professional a
 24 problem if there was not enough access for cars.
 25 Do you recall that?

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Page 1439

JOHN LEASE - REDIRECT

MR. CHESLER: Object, your Honor, I didn't say it was a safety professional.

Q. Safety experience. We can look it up. Do you recall that?

A. I think the comment was would it be a safety issue if access was blocked to the facility because there were too many cars in the parking lot.

Q. You said I don't need to be a safety expert or professional, I forget the word to know that, it is obvious; right?

A. It is obvious, yes.

Q. Would it be a safety issue for employees at the plants if they didn't have trees to shade their cars while they were working?

A. If somebody was prone to heat stroke, possibly.

MR. ZUROFSKY: Nothing further.

MR. CHESLER: Your Honor, I promise two minutes.

RE-DIRECT EXAMINATION MR. CHESLER:

Q. Would you quickly go back to Ms. Hall's letter tab 19 in the book, please,

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JOHN LEASE - REDIRECT

Mr. Zurofsky asked you about the fact this was a letter you got in response to a letter to Ms. Hall that dealt, among other things, with the Torrance facility, just asked you about that a FEW minutes ago. Do you recall that?

A. Yes.

Q. Would you look at page 341 third page of the letter or front of the second physical page. 341. Do you have that?

A. Yes.

Q. Look at the bottom of the page, the paragraph about Torrance.

A. Okay.

Q. She says "According to Alcoa's Phase I and Phase II assessments there are signs of some environmental contamination, however" she goes on to say "Groundwater contaminants as Mission Geoscience reports likely came from offsite sources" do you see that?

A. Yes.

Q. Then she tells you, "in any event," in other words, regardless of anything I just said, all of the assessments for this site, like all of the assessments and characterizations are

Page 1441

JOHN LEASE - REDIRECT

not Fasteners Environmental Liabilities unless and until remedial action occurs, there is no basis for a claim under section 11.6. She told you unless the doctor tells you you're dying you're not getting paid for the physical; right?

A. Right.

Q. He asked you about the Fullerton facility, he pointed out the particular paragraph I showed you in the Phase I related to the warehouse as opposed to the factory. Do you remember that?

A. Yes.

Q. Based on all your experience with these people over four years, do you believe if you said pay for the machine guarding across the street in the factory rather than the warehouse they would have paid you for it?

A. No, sir.

Q. Last question, after you got this little missive from Ms. Hall, did you honestly think that they would have paid you for machine guarding in any of the other sites other than the four five or six or seven you already told them about?

Page 1442

JOHN LEASE - RECROSS

A. No, sir.

MR. CHESLER: No further questions.

MR. ZUROFSKY: One question, your Honor.

RE-CROSS-EXAMINATION BY MR. ZUROFSKY:

Q. That same document, turn the page after the paragraph Mr. Chesler just read you when he said "in any event," so on and so forth. Do you recall that a minute ago, yes?

A. Pardon.

Q. Do you recall Mr. Chesler just read you a paragraph from Ms. Hall's letter?

A. Yes.

Q. Turn the page. Top of the next page, very next paragraph. And lastly, as you should know, section 11.6 C requires Alcoa to consult with and provide information to Fairchild with respect to Fasteners Environmental Liabilities. Section 11.6 D requires proper notice of matters which may give rides to indemnification obligation, no information was imparted no consultation was sought and no prompt notice was given with

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1 JOHN LEASE - RECROSS
 2 respect to any of the expenses incurred and
 3 actions under taken by Alcoa of the matters
 4 under review. Do you see that?
 5 A. Yes.
 6 Q. She is responding to the chart were
 7 you gave a million dollars of investigation
 8 costs following Mr. Beckford's letter; right?
 9 A. Let me point out subsequent to this
 10 every work plan, every report, every scope of
 11 work we sent to Fairchild received no
 12 substantive comment.
 13 Q. I didn't get an answer to my
 14 question.
 15 A. It gets back to Mr. Chesler's
 16 point. The attitude at this point on behalf of
 17 Fairchild was clearly they were going to block
 18 every avenue that we had to receive
 19 indemnification for the issues we inherited from
 20 Fairchild.
 21 Q. The parties went to remediation
 22 shortly after this?
 23 A. What is the date on this letter?
 24 Q. February 25, 2005.
 25 A. Thereabouts.

Page 1444

1 JOHN LEASE - RECROSS
 2 MR. ZUROFSKY: I have nothing.
 3 THE ARBITRATOR: You are excused.
 4 (Witness excused)

5
 6 (Time Noted 6:24 p.m.)
 7
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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, TAMMEY M. PASTOR, a Registered
 Professional Reporter, Certified LiveNote
 Reporter and Notary Public within and for the
 State of New York, do hereby certify that the
 foregoing proceedings were taken before me on
 January 11, 2007;

That the within transcript is a true
 record of said proceedings;

That I am not connected by blood or
 marriage with any of the parties herein nor
 interested directly or indirectly in the matter
 in controversy, nor am I in the employ of the
 counsel.

IN WITNESS WHEREOF, I have hereunto
 set my hand this ____ day of _____,
 2007.

TAMMEY M. PASTOR, RPR, CLR

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I N D E X

WITNESS:

PAGE:

(Arbitration Exhibit 429 was marked.)	103
(Arbitration Exhibit 430 was marked.)	109
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(Arbitration Exhibit 434 was marked.)	133
(Arbitration Exhibit 435 was marked.)	133
(Arbitration Exhibit 437 was marked.)	141

(Exhibit 436 intentionally skipped.)
